

No. 14702

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United States  
Court of Appeals  
for the Ninth Circuit

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FREDERICK I. RICHMAN, Appellant,  
vs.

LYDA TIDWELL, ROY E. HALLBERG, as Receiver of all the real and personal property constituting the former Richman Trust, and JOHN WHYTE, attorney for Receiver, Appellees.

LYDA TIDWELL, Appellant,  
vs.

FREDERICK I. RICHMAN, ROY E. HALLBERG, as Receiver of all the real and personal property constituting the former Richman Trust, and JOHN WHYTE, attorney for Receiver, Appellees.

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Transcript of Record

In Three Volumes

VOLUME III.

(Pages 649 to 974, inclusive.)

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Appeals from the United States District Court for the Southern  
District of California, Central Division

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(Testimony of Frederick I. Richman.)

Q. What did Mr. Hallberg say concerning that subject [425] matter and what did you say concerning that subject matter of his experience in managing apartment buildings?

A. I asked Mr. Hallberg if he was in the business of operating multiple housing. He said yes, he was.

I said, "How big are your houses?"

He said he had a 40-unit.

I said, "Where?"

He said, "On East Colorado."

I said, "Pasadena?" He said, "Yes."

I said, "What is the name of the building? I thought of buying some properties over there once and I might know it."

Q. You are relating the conversation?

A. Yes. Mr. Hallberg said, "Well, I am not going to talk any more with you. I have been told **not** to discuss myself with you."

So I excused the conversation and changed it to the weather.

Q. Now, directing your attention to the Western Arms concerning the refrigeration system and the incident of February 17, 1954, did you receive a telephone call concerning that subject matter?

A. I did.

Q. From whom?           A. Mrs. Kennedy. [426]

Q. She was the witness that previously testified here?

A. She was the manager of the Western Arms. She previously testified here.

(Testimony of Frederick I. Richman.)

Q. What was said by that agent of the Receiver?

Mr. Whyte: Again, just for the purpose of the record, I would like to object to this as calling for hearsay testimony.

The Court: You dispute she was an agent?

Mr. Whyte: No, I don't dispute that, your Honor, but again I don't think that her conversations with Mr. Richman are within the scope of her employment as Mr. Hallberg's agent.

The Court: Whether they were or were not will have to be determined somewhat by the nature of the conversation. You might say a lot of things that do not bear upon a particular relationship, and then you might say some things of which there is a question whether they do or whether they do not.

It is difficult, without hearing what was said, to determine whether it was pursuant to the agency or was in derogation of it. So the objection is overruled, with the comment the court will have to scrutinize it with a critical eye.

The Witness: Mrs. Kennedy stated she had a bad break in the refrigeration system. That she had tried to get hold of Mr. Hallberg, had tried to get hold of Miss Cosgrove and wasn't successful.

There was gas leaking in the building, and what should [427] be done. And I told Mrs. Kennedy I had no say in the operation of the buildings, that I didn't want to be put in a position where I could be criticized, but the first concern was to see that the guests in the building were taken care of, be-

(Testimony of Frederick I. Richman.)

cause they were producing the rents that kept the trust going.

And that I thought she was entirely within her rights, if he had not changed the refrigeration company, that had been on previously, or had given her any statements as to it to change, for her to call that refrigeration company and tell them to do whatever was necessary to protect the tenants in the building and protect the income from the property.

Q. (By Mr. Enright): What day was that?

A. That was about the 17th of February.

Q. Did you receive another call the following day?

A. I did.

Q. From whom?

A. Mrs. Kennedy.

Q. The substance of that call was what?

A. She was still unable to get in touch with Mr. Hallberg or Miss Crogrove. There appeared to be nobody at the office.

That she had asked for Mr. Harrison, but had been told Mr. Harrison was no longer working for the Receiver. And the matter was still causing considerable trouble and what [428] should she do.

I again repeated I did not want to be in the position of advising her anything, and the only thing for her to do—and I thought she would be protected—was to carry through with the service company that I had formerly used for the trust, and which evidently Mr. Hallberg was continuing to use.

Q. Did you receive a call from that service company?

A. I did.

(Testimony of Frederick I. Richman.)

Q. Do you know whether or not the agents of the Receiver used that service company?

A. They used that service company for a period of time, and then discharged that service company.

The service company called me a couple of times, wanting to know what to do. They had been unable to get in touch with Mr. Hallberg or Miss Cosgrove.

Q. Now, directing your attention to the Oliver Cromwell payment of January 1, 1954, did you receive telephone calls from a Mrs. O'Neal of the Pacific Mortgage Company concerning that subject matter of payment? A. I did.

Q. What dates?

A. On January 14, 1954, I received a call relative to the nonpayment of the January 1, '54 payment on the Oliver Cromwell. [429]

Q. That is the payment you testified that showed the check cleared on January 18th, is that it?

A. That is correct.

Q. Directing your attention——

A. After receiving that call I endeavored to contact Mr. Hallberg, but could not reach him. I contacted Mr. Harrison, and he stated the check was drawn and was on Mr. Hallberg's desk, waiting for him to come in to sign the check and send it through.

Mr. Whyte: Again I want to move that the answer with respect to what was told him by Mrs. O'Neal at the mortgage company is purely hearsay.



(Testimony of Frederick I. Richman.)

There has been no showing she was an agent of the Receiver.

The Court: If that is in the form of a motion to strike, the court will grant it.

Mr. Whyte: That is right, it is a motion.

The Witness: I received on January 11th a notice from Pacific Mortgage of a reminder that the mortgage payment of \$2,027.25 due on 1-1-54 had not been paid.

Q. (By Mr. Enright): Is this the notice?

A. That is the notice.

Mr. Enright: We will offer this in evidence, partially in corroboration of the agent Harrison's statement that the check was lying on Mr. Hallberg's desk; that portion of his testimony was not stricken.

The Court: Received.

The Witness: I called Mr. Harrison after receiving that notice.

The Clerk: Defendants' F in evidence.

(The document referred to was marked Defendants' Exhibit F and was received in evidence.)

The Witness: Defendants' Exhibit F. And then I called him again after receiving the telephone call from Mrs. O'Neil on January 14th.

Q. (By Mr. Enright): Directing your attention to the Brookshire payment book, was there such a book recording payments on that trust deed note? I assume it to be——

A. Yes, there was.

Q. Now, you received correspondence or phone

(Testimony of Frederick I. Richman.)

calls concerning the action of the agent or nonaction of the agent on that subject matter?

A. I did.

Q. When?

A. The payment was due on the 15th of the month. On December 15th the payment came into my office. I transmitted it to Mr. Hallberg by envelope.

On or about January 7th I received a note from Mrs. Brookshire that the payment had not been—the payment book had not been received, and requested that it be mailed to her so that they could send in their payment on the next—the [431] 15th of January.

I sent that note to Mr. Hallberg.

Mr. Whyte: I am going to move to strike his communications, either in the form of notes or otherwise, from Mrs. Brookshire. There is no showing she is an agent of the Receiver. Here again it is purely hearsay.

The Court: The motion is granted.

Mr. Enright: The offer of the evidence is for the purpose of showing nonaction or failure of the Receiver to perform his duties.

Q. (By Mr. Enright): Do you have the notice? I believe that is base evidence. Mr. Richman, do you have the note? Or did you forward that to Mr. Hallberg?

A. Yes, I have the note. I am sorry, I misstated myself before. I called Harrison, on receipt of this, and asked for Mr. Hallberg and he was not in.

(Testimony of Frederick I. Richman.)

Q. What did Mr. Harrison say when you talked to him, the agent of the Receiver?

A. Mr. Harrison stated that Mr. Hallberg had not released the return of that book, but he would bring it to Mr. Hallberg's attention the next time he saw Mr. Hallberg, and would send it back to her.

Q. That was shortly after January 7, 1954?

A. Yes.

Q. That pertained to the December 15, 1953 payment? [432]

The Court: On what obligation?

Q. (By Mr. Enright): Could you answer the court's question?

A. On a deed of trust that was owned by Richman Trust; trust deed receivable.

Mr. Enright: I will offer in evidence this January 7, 1954——

Mr. Whyte: To which objection is made on the ground it is hearsay.

The Court: Let me see it. It will be received as a document received in the course of business.

The Clerk: Defendants' G in evidence.

(The document referred to was marked Defendants' Exhibit G and was received in evidence.)

Q. (By Mr. Enright): Now, directing your attention to Arden Farms commission check, particularly, I believe, one of December 18, 1953, do you have such a transaction in mind? A. I do.

Q. State what occurred in connection with that transaction concerning the Receiver's action?

(Testimony of Frederick I. Richman.)

A. The Arden Farms sent through a check for five per cent of the milk bill at the Canterbury between the 15th and 20th of each month.

The check was made payable to F. I. Richman individually, because they would not make it payable to the trust. [433]

Mr. Whyte: Just a moment. I am going to move to strike that as a pure conclusion of the witness and move to strike the rest of the testimony, as there is no sufficient foundation laid. I can't tell where this information was coming from, or anything of the sort, so I can make a proper objection.

The Court: The motion is granted. I think it is probably a relevant source of inquiry, but we don't have enough foundation.

I know what you are driving at, Mr. Enright.

Q. (By Mr. Enright): During the period January 1, 1946 to November 30, 1953, did you as agent for the trust have a continuing transaction with Arden Farms?

A. Not from your starting date. From the time of the acquisition of the Canterbury to the end of November I had a continuing transaction with Arden Farms.

Q. When did you acquire, as agent for the trust, the Canterbury?

A. The trust acquired the Canterbury, I believe it was October 1948.

Q. From that date to November 30, 1953, did Arden Farms furnish the milk, as best you now recollect, for the Canterbury?



(Testimony of Frederick I. Richman.)

A. For the guests of the Canterbury that desired to have the milk delivered to their door by the Arden delivery, [434] it did.

Q. During that period of time, up to November 30, 1953, was there a commission payable to the trust on account of milk delivered by Arden to the Canterbury Apartments?

Mr. Whyte: I am going to object to this line of testimony as being immaterial and irrelevant. What may have taken place under Mr. Richman's regime, so far as his dealing with Arden Farms is concerned, doesn't seem to me to prove or disprove any issue with respect to the Receiver.

The Court: But it might provide a foundation for evidence at a later time. The objection is overruled.

The Witness: I received five per cent of the previous month's bill, a check from them between the 15th and 20th of each month.

Q. (By Mr. Enright): Had you been receiving that for several months before November 30, 1953?

A. Ever since the acquisition of the Canterbury.

Q. Now, did you receive a communication from Arden Farms of any form?

A. On December 18, 1953, I received a check from Arden Farms in the amount of \$5.69.

Q. What did you do with it?

A. Put it in an envelope and mailed it to Roy Hallberg, Receiver, 418 South Normandie, Los Angeles 5.

Q. And then what happened? [435]

(Testimony of Frederick I. Richman.)

A. On about January 8th I received the check back, together with a notation dated 1-7-54:

“Mr. Richman:

“Will you please endorse the Arden Farms check attached and return to me? Thanks.

“Roy E. Hallberg.”

It was all typewritten; not even signed by Mr. Hallberg.

Q. Now, directing your attention to the gas utility company that furnished you gas services, will you state whether, or, which utility of our Los Angeles Utilities furnished gas to these five apartment houses?

A. Southern California Gas Company furnished gas to all five buildings.

Q. On or about January 8, 1954, did you receive a communication from the Southern California Gas Company concerning payment of the gas utility bills?

A. I received an audited request at that time from the Gas Company, showing it did not call for a reply or payment, but stated—showing that the account, the bill for the period ended December 14th of \$81.78 was still outstanding.

Q. That is as of January 8, 1954?

A. That is correct. I contacted Mr. Harrison and verified it, and did not send it through, because it was merely an accounting audit. [436]

Q. Now, as to the water and power bills.

A. Well, also on January 21st I received the

(Testimony of Frederick I. Richman.)

bill from the Gas Company for the Canterbury for the period December 14th to January 14th in the amount of \$89.39, and showing that the bill for the period from November 12th to December 14th, in the amount of \$81.78 was still unpaid, making a total amount due of \$171.17 as of January 21, 1954.

Q. Now, directing your attention to the power and water utilities, did you receive communications from those concerning the Receiver's incurring or not incurring those bills?           A. I did.

Q. Recite the dates.

A. January 15, 1954, the water, light and power bill for the Oliver Cromwell, for the period of December 7th to January 7th, was received by me.

I transmitted it to Mr. Hallberg, and attached to it was a sticker, "Your previous bill may have been overlooked. Please give this statement your prompt attention."

Also, I had received a gas bill for the Fountain Manor for the period December 7th to January 7th in the amount of \$207.45, showing the bill for the period November 4th to December 7th, in the amount of \$199.66 was still unpaid; for a total of \$407.11.

Q. That is as of January 15, 1954? [437]

A. Yes.

Q. Those are utilities as of November, which were yet unpaid?           A. Yes.

Q. Now, directing your attention to the LaLoma Apartments and the phone bills.

A. On January 19, 1954, I received both phone

(Testimony of Frederick I. Richman.)

bills for the LaLoma, for the period as of January 11, 1954, and both bills—that is, the house bill and the manager's phone showed that the December 11, 1953, phone bill of both the manager and the house was unpaid.

The manager's phone was \$4.40 for the current month, and the previous unpaid month was \$4.11.

The house phone was \$8.31 for the current month, and \$6.33 for the previous month, which had not been paid.

The utility bills and phone bills were all in my name, and I received numerous calls from them relative to non—from the utility companies relative to the nonpayment of the bills.

The Receiver evidently made no attempt to transfer the service into his name as Receiver.

Q. Directing your attention to Barker Bros., did you receive a notice from them sometime in January 1954? A. I did, January 18, 1954.

Q. What was that bill for and for what period of time? [438]

A. The bill was for—the notice was for \$603.34 relative to purchases made in November, and that was one of the bills I had delivered to Mr. Hallberg as being unpaid when he took over the operation of the trust, about December 1, 1953.

Q. Did your previous testimony cover the Canterbury gas bills? I guess it did, didn't it?

A. Yes, but on January 26, 1954, I received a telephone call from H. B. Hanson, credit office of the Telephone Company, relative to the Canterbury

(Testimony of Frederick I. Richman.)

phone bill, in the amount of \$278.44 being unpaid.

Q. I will direct your attention to compensation insurance policy. Did you receive a request upon that item?      A. I did.

Q. What date?

A. I received the blank statement to put on the payroll figures about December 28, 1953. I sent that to Mr. Hallberg, with the request that he put on the figures for the trust for the period of October and November 1953.

And then I would send it to the company, and then would be able to compute the amount of the insurance deposit premium which goes to the trust and would repay the trust with.

Q. The Receiver had then taken possession of all the books and records for the months of October and November, is [439] that right?

A. That is correct. I didn't have any information relative to the amount of payroll for November or October, which I needed for that audit.

Q. Did you receive a reply from the Receiver?

A. I did not. On January 22nd I received a second request from the insurance company. I transmitted that and talked with Mr. Harrison.

He stated that he would try to get it out as quickly as he could, but he would have to discuss it with Mr. Hallberg and he didn't see Mr. Hallberg very frequently.

Q. Directing your attention to a deposit, I believe, shown by the Receiver's account, in the sum



(Testimony of Frederick I. Richman.)

of \$400.00 on account of compensation insurance, do you have that subject matter in mind?

A. Yes.

Q. There is such an item shown?

A. Yes, the compensation insurance companies require a premium deposit. In this instance of \$400.00, to write the policy, so the receiver's books reflect—and I was present when he ordered the policy from Mr. Dulley, and was told it would be \$400.00 deposit premium on the compensation policy, which he had to take out in his name as Receiver.

Q. Does the Receiver's accounting in any manner account for the refund, if any, or dispose of that \$400.00 item, other [440] than being a charge?

Mr. Whyte: I object to that. The Receiver's account is the best evidence and will speak for itself.

The Witness: There is nothing in the Receiver's account showing any audit on that compensation or any return premium on that.

The Court: They seem to be going along with your objection, Mr. Whyte; Receiver's account now.

Q. (By Mr. Enright): Have you examined the account? A. I have.

Q. Is there any place in here where there has been a refund or an accounting in any manner on the \$400.00? A. There has not.

Q. Are you familiar with the payroll incurred by the Receiver while he was in possession of the property? A. I am.

Q. Are you familiar with rates being paid for

(Testimony of Frederick I. Richman.)

such payroll during comparable periods of time, going back so far as January 1, 1946, for example?

Mr. Whyte: Miss Reporter, will you read the question? I didn't catch it.

(The question was read.)

Mr. Whyte: What payroll is that?

Mr. Enright: The payroll for which Mr. Hallberg deposited \$400.00. [441]

Mr. Whyte: I understood that \$400.00 to be an insurance deposit. I don't quite catch the connection.

Mr. Enright: Compensation insurance.

The Court: I think they are proving the payment on premium for workmen's compensation coverage for employees of the trust.

Is that right?

Mr. Enright: That is correct, your Honor.

The Court: What is the point you are making, so Mr. Whyte can get it?

Mr. Enright: I am endeavoring to introduce the evidence which will demonstrate there has been no accounting or settlement of the account by the Receiver, first.

And, second, we will produce evidence there is approximately \$150.00 refundable on account of the \$400.00 deposit; another action or nonaction on the part of the Receiver.

Mr. Camusi: I am going to make an objection to this line of questioning because it affects the plaintiff Tidwell in this action.

We are not here to protect the Receiver, but, at

(Testimony of Frederick I. Richman.)

the same time, we are interested in any charges made along the line of refund.

I think we should be fair to the Receiver. We called him in here one morning and said, "Plaintiff and defendant have reached an agreement. You give over possession this [442] week end. And the order specifically states you turn over everything to Mrs. Tidwell and her agents, other than cash in bank and under your control."

Now, at that time, I will stipulate for the purposes of this argument, that the Receiver had not used up the whole \$400.00 he had been paid—that the Receiver had not used up the whole \$400.00 he had paid in this five-month period.

Now, we have made an agreement. We bought out the assets of the trust as of March 1st.

Now, if they have any complaints on that, that is against us. That is something that can be decided with us.

We can't just kick a Receiver out over a week end and then say, "You failed to make an accounting of any moneys that hadn't been used up."

The point is he paid the money out and he shows it in his accounting. I think the matter speaks for itself.

If they think, Defendant Richman thinks he is entitled to any of this money, that is something for the plaintiff and defendant to fight out in their lawsuit.

Furthermore, I am interested in anything that



(Testimony of Frederick I. Richman.)

will not jeopardize anyone's rights, and will save some time.

The Court: Well, I rather gather from the line of testimony that Mr. Enright is endeavoring to show us the practice by the Receiver. Is that right?

Mr. Enright: That is one point. [443]

The Court: To that end the door has to be opened to receive testimony which might be relevant in that field, whether it does or does not prove the implied accusations, so the objection will be overruled.

Q. (By Mr. Enright): My desire, Mr. Richman, is to ascertain now whether or not you have made an audit, based upon your experience, as you previously testified, as to the amount of money refundable under this \$400.00. A. I have.

Q. What is the amount?

A. The compensation policies run differently from others.

Mr. Whyte: I am going to object to this. There is no sufficient foundation laid for his knowing all the facts which will indicate——

The Court: Objection sustained. No proper foundation.

Mr. Whyte: ——what the amount will be.

Q. (By Mr. Enright): Did you examine the books and records of the Receiver? A. Yes.

Q. Did you examine his accounting?

A. I have.

Q. Did you ascertain the amount of money he paid on account of payroll?

(Testimony of Frederick I. Richman.)

A. I have; it is in his report. [444]

Q. Did you examine to ascertain the rate of charges for workmen's compensation insurance?

A. I have.

Q. State the amount that accrued.

A. The amount accrued——

Mr. Camusi: I object to that on the ground it is still not the best evidence. I don't want this evidence coming in. I want to see the relevant records.

The Court: Objection sustained.

Mr. Enright: You want to see the records.

Q. (By Mr. Enright): Will you get the records, Mr. Richman?

The Witness: Do you want to take a recess? It is going to take me some time to dig them out.

The Court: All right. We will recess until the witness finds the records.

(Short recess taken.)

Mr. Whyte: Your Honor, I wonder if I might have permission to ask Mr. Richman a few questions on voir dire, with respect to this and so-called insurance refund.

I think I can show it has no materiality here, if I can be permitted to ask the witness a question or two.

The Court: All right. Go ahead. [445]

#### Voir Dire Examination

Q. (By Mr. Whyte): Mr. Richman, you mentioned a figure, I believe it was \$400.00, in the form

(Testimony of Frederick I. Richman.)

of a refund from an insurance company on account of compensation insurance, is that correct, sir?

A. Not a refund of \$400.00.

Q. How much was the refund?

A. I figure the refund should be in the neighborhood of \$158.00.

Q. Is that the item which you said was not shown in the Receiver's report?

A. That is correct.

Q. When did that refund—when was that item refunded to the Receiver, if you know?

A. I don't know whether it has been refunded. It would be refunded until the Receiver filed his payroll figures for the three months of his operation. The company computed the amount of premium upon his payroll figures, and then he would ask for a refund.

Q. You say you don't know whether it has been refunded or not?

A. No. It does not show in his report at all.

Q. If it had not been refunded, naturally, it would not show in the Receiver's report, would it?

A. That is correct, but it is an amount that should belong to the Receiver. It was money deposited there, that hasn't been used up and is returnable to the Receiver.

The \$400.00 deposit does show on his books, as having been paid out.

Q. You are familiar with the fact that the Receiver's report covers the period from December,

(Testimony of Frederick I. Richman.)

roughly December 1, '53, to February 28, 1954, are you not? A. That is correct.

Q. Then any transactions occurring outside of that period would not be shown in the Receiver's report, would they?

A. No, the Receiver's report also shows many checks dated March 8, 1954, after the period of his report.

Q. You refer to the many checks which you show in the Receiver's report. Will you direct my attention to those, please, Mr. Richman?

A. Yes. They are on Exhibit C, "Disbursements Made by the Receiver, as Directed by the Court, Covering Liabilities Incurred Prior to February 28, 1954, but not Paid Until After that Date," which is three pages of them.

And then the recapitulation at the bottom of page 3 shows the amounts according to the three months operation of \$26,819.19.

The payments as listed above of \$6,121.40, and that means [447] the payments which were made after February 28, 1954.

Then it shows the balance as of March 10, 1954, of \$20,697.71.

Q. Schedule C you have referred to is listed, is restricted to disbursements made on account of liabilities incurred during the month of February 1954, is it not, Mr. Richman?

A. That is what it states there, yes.

Q. And a refund on account of insurance is not a liability incurred, is it, Mr. Richman?

(Testimony of Frederick I. Richman.)

A. Yes. The insurance premium was due and payable for the period of time of the three months' operation, subject to an audit.

Q. Do I understand you correctly as telling me that when the receivership or successors to the Receiver have a refund coming from the insurance company, that that is a liability which they have incurred?

A. No, not a liability they incurred, but their payroll compensation insurance for the three months' period of time is a liability they have incurred in the receivership.

Mr. Whyte: I think I have developed sufficiently to show your Honor that the omission of any refunds from Mr. Hallberg's report is completely explicable upon the ground it wasn't received during the period which the report covers and, in fact, the witness doesn't even know it yet has been [448] received.

The Court: Treating that as an objection, the objection is sustained. Now, it would be proper to show that, if it be the fact, that the Receiver was entitled to a refund, that the Receiver did not apply for the refund.

That under the contract or the rights as fixed by law the time within which the refund could be obtained has expired.

You will have to make a showing along such avenues as will develop those facts, rather than this attempted experting of insurance refunds by a lay witness.



(Testimony of Frederick I. Richman.)

Mr. Camusi: I would like the record to state my objection perhaps a little different way.

The Court: To what are you going to object, the question?

Mr. Camusi: The whole line.

The Court: The court's ruling or what?

Mr. Camusi: The whole line of questioning, your Honor. I don't think they can make out a case on the bare facts in this case, because this court order, signed by your Honor that Friday morning, which directed the turning over of the assets to the plaintiff Mrs. Tidwell on Sunday afternoon, said all assets.

This potential refund at that time was an asset. It was turned over to Mrs. Tidwell.

If they think they have some interest in that, that is [449] something we will fight out on our own. It is our position they haven't.

The Court: Let's mark that down as one item to be considered in the pretrial that is coming up.

Mr. Camusi: That is right. You can't come here and attack the Receiver for not having collected this. We wouldn't have permitted it, because, under order of court and our stipulation with the defendant Frederick Richman, it was conceded on all sides that all assets, except money in the bank or under the control of Receiver at that time, were to be turned over to the plaintiff, and they were turned over.

The Witness: The only way that refunds on

(Testimony of Frederick I. Richman.)

deposit could come back would be to Mr. Hallberg. The policy is in Mr. Hallberg's name.

The Court: His statement doesn't call for a statement from you. There was no question for you to make a statement to.

Mr. Enright: The amount of \$125.00——

Mr. Camusi: I will stipulate, to save time—we are in the process of checking that—if Defendant Richman thinks he has any right to it, that refund, he will have ample opportunity to make that claim in his fight with us.

The Court: That is where I think we should consider it, instead of considering it with this Receiver, who was subject to an order. [450]

The Witness: That check will come back in the name of the Receiver and will be endorsed by him over to you and your client, or he will send an authorization to the company to give it to you, according to the insurance rules. Otherwise, it will come directly back to the policyholder, who is Mr. Hallberg.

Q. (By Mr. Enright): Mr. Richman, have you examined the books and records and correspondence of the Receiver?

A. To a certain extent, yes.

Q. Did you find anything in there anywhere pertaining to the Receiver making an application for a refund——

A. No.

Q. ——or report of any kind——

A. No.

Q. ——on this subject?

A. No.

Mr. Whyte: Again I am going to object to this.

(Testimony of Frederick I. Richman.)

There is no foundation laid here to show under what circumstances the Receiver would have to make an application. I don't see the materiality.

The Court: He can only ask one thing at a time. Objection overruled.

I do think, Mr. Enright, this could be pursued between Mrs. Tidwell and Mr. Richman, rather than on this fixing of a Receiver's compensation. [451]

Mr. Enright: I bring it out at this time, your Honor, primarily in response to the conclusion of the Receiver he was so experienced in this field, he had conducted this business so efficiently. Here is a fine example, in my opinion, at least, as to some of his activities.

Q. (By Mr. Enright): You did go over all the books and records and found no application of any kind pertaining to refund for workmen's compensation insurance? A. That is correct.

Q. That will be a matter of auditing, I suppose. Now, directing your attention to public liability insurance, and particularly Mr. Hallberg's testimony that the public liability insurance insured your property, as distinguished from property of the trust.

Did you examine the records pertaining to that insurance? A. I did.

Q. Was there any of your property covered by that insurance? A. There was not.

Q. Did Mr. Hallberg do anything pertaining to that insurance with reference to the premiums?

A. Yes. He stopped payment on the check of



(Testimony of Frederick I. Richman.)

the trust I had sent out for the payment of the premium on there, and then at a subsequent time he issued a check, No. 207, dated [452] January 10, 1954, to Robert H. Dulley Company, for \$3,827.66, being marked in the voucher part "12-1-53. CL 13828 for \$3,427.66." That is the amount of the liability policy.

And also "12-2-53, C—" which stands for compensation—" \$480.00, 12912."

That was the \$400.00 deposit on the compensation policy, which he took out for himself.

The check bears the stamp of Union Bank perforation, as having been paid on 1-18-54.

The public liability policy was not rewritten in any way. It was the identical policy that Mr. Dulley had submitted to me and which I turned over to the Receiver on, I believe, December 4, 1953.

Q. Now, directing your attention to the subject matter of fiduciary income tax return, and particularly to Mr. Hallberg's testimony he had two conferences at the Revenue Department, on how to prepare that return or in connection with the return, did you receive a statement from the Receiver as to the amount of moneys that had to be received by you as beneficiary and had been received by the plaintiff as a beneficiary?

A. Well, I didn't receive any statement from Mr. Hallberg. I received some sheets that professed to give the 1953 year's operation of the Richman trust.

(Testimony of Frederick I. Richman.)

Q. Did you locate the copy of the fiduciary return [453] prepared by the Receiver?

A. Yes, I have in the record, since no copy was ever sent to me for my information.

Q. May we have it at this time and have it marked for identification?      A. Yes.

Mr. Enright: May this be marked next in order for identification?

I would like to offer it in evidence, if there is not going to be objection.

Mr. Whyte: No.

The Court: Received.

The Clerk: Defendants' H in evidence.

(The document referred to was marked Defendants' Exhibit H and was received in evidence.)

## DEFENDANTS' EXHIBIT H

FORM 1041

U. S. Treasury Department  
Internal Revenue ServiceU. S. FIDUCIARY INCOME TAX RETURN  
(FOR ESTATES AND TRUSTS)  
For Calendar Year 1953

1953

or taxable year beginning Jan. 1, 1953, and ending January 1, 1954

(PRINT NAMES AND ADDRESS PLAINLY BELOW)

Name of  
Estate or Trust THE WILLIAM H. HALLBERRY TRUST  
CHECK (✓) WHETHER ESTATE ☐ OR TRUST ☒ of Dec. 1, 1953Name and  
Address of  
Fiduciary  
William H. Hallberry  
117 North Hill StreetLos Angeles 13, California

Do not write in these spaces

Serial  
No.

(Cashier's Stamp)

Item and  
Instruction No.

## INCOME

1. Dividends.....	\$		
2. Interest on bank deposits, notes, corporation bonds, etc. (except interest to be reported in item 3).....		125.00	
3. Interest on tax-free covenant bonds upon which a Federal income tax was paid at source.....			
4. Interest on Government obligations, etc., unless wholly exempt from tax.....			
5. Income from partnerships, and other fiduciaries (from Schedule A).....			
6. Rents and royalties (from Schedule B).....		90,796.13	
7. (a) Net gain (or loss) from sale or exchange of capital assets (from Schedule C).....			
(b) Net gain (or loss) from sale or exchange of property other than capital assets (from Schedule D).....			
8. Profit (or loss) from trade or business. (Attach statement).....			
9. Other income. (State nature of income) <u>Div. cert. excess. div. coll. deductions</u> .....		3.56	
10. Total income in items 1 to 9.....	\$	90,926.13	
DEDUCTIONS			
11. Interest. (Explain in Schedule F).....	\$		
12. Taxes. (Explain in Schedule F).....			
13. Other deductions authorized by law. (Explain in Schedule F).....		36,856.89	
14. Total deductions in items 11 to 13.....	\$	36,856.89	
15. Balance (item 10 less item 14).....	\$	54,069.24	
16. Less: Amount distributable to beneficiaries (total of columns 3 and 4, Schedule G).....		21,039.50	
17. Net income taxable to fiduciary (item 15 less item 16).....	\$	33,029.74	

COMPUTATION OF TAX FOR CALENDAR YEAR 1953  
(For Other Taxable Years Attach Form 1041PY)

18. Net income (item 17, above).....	\$	33,029.74	
19. Less: Exemption (\$600 for an estate; \$100 for a trust).....		100.00	
20. Balance (item 18 less item 19).....	\$	32,929.74	
21. Tax on amount in item 20. See Tax Rate Schedule in Instruction 21. (If item 18 includes partially tax-exempt interest, see Instruction 21).....	\$	None	
22. If alternative tax computation is made, enter tax from line 23, Schedule C.....	\$	None	
23. Less: Fiduciary's share of income tax paid to a foreign country or U. S. possession. (Attach Form 1116).....	\$		None
24. Fiduciary's share of income tax paid at source on tax-free covenant bond interest.....	\$		
25. Total of items 23 and 24.....	\$		
26. Balance of tax (subtract item 25 from item 21 or item 22, whichever is applicable).....	\$	None	



Defendants' Exhibit H—(Continued)

FORMER RICHMAN TRUST PROPERTIES

RECONCILIEMENT OF INCOME

December 31, 1953

Net Income from Properties (See Attached Schedule)	\$90,796.13
Interest Earned	126.44
Miscellaneous Income (See footnote)	<u>3.86</u>
Gross Income	\$90,926.43

Expenses:

General Expense	\$	459.99	
Insurance -			
Compensation	\$	713.13	
Public Liability		<u>787.76</u>	1,500.89
Management Fee	\$	34,429.63	
Office Salaries		475.00	
" Payroll Taxes		<u>21.18</u>	<u>34,926.01</u>
Total Expenses			<u>36,886.89</u>
Net Income			<u>\$54,039.54</u>

\*Odd-cent excess payroll  
tax deductions in 1953.

Withdrawals:

Lyde R. Tidwell	\$	19,887.51	
Frederick I. Richman		<u>19,887.50</u>	39,775.01

<u>Undistributed Income</u>			<u>14,264.53</u>
			<u>\$54,039.54</u>



FORMER RICHMAN TRUST ACCOUNT

SCHEDULE K-1 INCOME AND EXPENDITURES FOR THE YEAR 1951

	<u>Centerbury</u>	<u>Mountain Manor</u>	<u>La Loma</u>	<u>Cliver Cromwell</u>	<u>Western Arms</u>	<u>Total</u>
<b>Income</b>	\$ 103,271.44	\$ 90,274.22	\$ 22,165.05	\$ 91,961.66	\$ 59,880.01	\$ 376,752.38
<b>Expenses:</b>						
Depreciation	\$ 27,662.97	\$ 17,576.14	\$ 10,111.57	\$ 25,731.72	\$ 10,440.21	\$ 91,742.61
Licenses & Taxes	\$ 6,831.19	\$ 7,566.32	\$ 2,654.30	\$ 8,312.63	\$ 5,347.84	\$ 32,742.28
Insurance	669.34	645.27	196.22	1,378.89	177.60	\$ 3,070.32
Interest				9,002.53		9,002.53
Maint. & Repairs	6,455.51	6,719.44	2,937.72	5,904.37	4,653.66	26,670.70
Utilities	7,956.12	8,597.75	2,719.73	8,001.32	3,741.82	31,018.77
Laundry	3,895.57	3,547.57	1,817.11	3,040.15	1,893.27	13,333.67
Salaries	20,224.63	19,644.57	3,705.36	19,168.13	8,225.21	70,968.20
Payroll Taxes	892.78	884.02	166.74	802.55	370.13	3,176.22
Miscellaneous	2,205.58	462.72	53.50	1,155.12	314.96	4,194.88
<b>Total Expenses</b>	\$ 79,015.69	\$ 65,644.93	\$ 23,597.25	\$ 82,557.41	\$ 35,104.70	\$ 285,219.98
<b>Net Operating Profit</b>	\$ 24,255.75	\$ 24,629.29	\$ 8,767.80	\$ 9,404.25	\$ 23,775.31	\$ 90,832.40
<b>Less:</b>						
Taxes--Lern Co. Acres				2.53		
" --Sedera County				18.14		
" --San Bernardino Acres				15.30		
						\$ 36.27
<b>Net Income from Properties</b>						\$ 90,796.13







SCHEDULE OF DEPRECIATION-1953

678

<u>Date Acquired</u>	<u>Cost of Improvement</u>	<u>Prior Depreciation</u>	<u>Remaining Cost</u>	<u>Estimated Life</u>	<u>Est'd Life 1st of Yr.</u>	<u>Depreciation</u>
<u>Centerbury Apt. Hotel</u>						
10-1-48 \$	347,733.05	\$ 88,671.15	\$ 259,061.90	16 2/3 Yrs.	12 5/12 Yrs.	\$ 16,647.72
10-1-48	35,000.00	17,850.00	17,150.00	8 1/3 "	4 1/12 "	4,200.00
Var.1950-1-2-3	32,011.92	8,190.76	23,821.16	4 1/6 "	Various	7,035.25
<u>Fountain Manor Apt.Hotel</u>						
1-15-44	178,359.98	77,890.42	100,469.56	20 "	11 "	6,809.24
1-15-44)						
9-25-48)	38,589.55	36,830.90	1,758.65	8 1/3 "	4 1/12 "	430.80
Var.1950-1-2-3	48,295.68	14,025.41	34,270.27	4 1/6 "	Various	10,081.64
1-15-44	6,666.67	2,985.01	3,681.66	20 "	11 "	254.46
<u>La Loma Apartments</u>						
5-20-49	140,000.00	30,100.00	109,900.00	16 2/3 "	13 1/12 "	6,842.52
5-20-49	10,000.00	4,300.00	5,700.00	8 1/3 "	4 3/4 "	1,200.00
Var.1950-1-2-3	8,155.34	2,668.88	5,486.46	4 1/6 "	Various	2,069.05
<u>Oliver Cromwell Apt.Hotel</u>						
9-1-50	315,051.18	44,107.00	270,944.18	16 2/3 "	14 1/3 "	15,988.80
9-1-50	35,000.00	9,800.00	25,200.00	8 1/3 "	6 "	4,200.00
Var.1950-1-2-3	25,956.09	6,687.23	19,268.86	4 1/6 "	Various	5,542.92
<u>Western Arms Apt. Hotel</u>						
5-7-41	121,014.48	56,489.70	64,524.78	25 "	13 1/3 "	3,973.56
Var.1950-1-2-3	28,863.11	8,470.05	20,393.06	4 1/6 "	Various	6,466.65
	\$ 1,370,697.05	\$ 409,066.51	\$ 961,630.54			\$ 91,742.61



## Defendants' Exhibit H—(Continued)

Page 4

Schedule G.—BENEFICIARIES' SHARES OF INCOME AND CREDITS. (Include as beneficiaries persons to whom amounts were paid or set aside for religious, charitable, etc., purposes.) (See Instructions 4 and 58)

1. Name and address of each beneficiary (Designate charitable organization, or non-profit school, etc., if any)	2. If return is for a trust, state relationship of grantor to each individual beneficiary	3. Taxable income less any partially tax-exempt interest included in Item 4, page 1	4. Partially tax-exempt interest included in Item 4, page 1	5. Federal income tax paid at source (2% of Item 3, page 1, less Item 24, page 1)	6. Income and profits taxes paid in a foreign country or United States possession
(a) Linda L. Sidwell 102 Sherman St. Beverly Hills, Cal.	Daughter	\$ 27,019.77	\$	\$	\$
(b) J. J. McMan 117 N. Hill Los Angeles 13, Calif.	Son	27,019.77			
(c)					
(d)					
(e)					
(f)					
(g)					
(h)					
(i)					
Totals	xxxxxxxx	\$ 54,039.54	\$	\$	\$

## QUESTIONS

1. Was an income tax return filed for the preceding year? Yes. If so, to which District Director's office was it sent? Los Angeles
2. Date estate or trust was created Oct. 1, 1918
3. If copy of will or trust instrument and statement required under General Instruction I have been previously furnished, state when and where filed overseas
4. Check whether this return was prepared on the cash ☐ or accrual ☐ basis.
5. Did the estate or trust at any time during the taxable year own directly or indirectly any stock of a foreign corporation or of a personal holding company as defined in section 501 of the Internal Revenue Code? (Answer "Yes" or "No") No. If answer is "Yes," attach list showing name and address of each such corporation and amount of stockholdings.
6. If return is for a trust, state name and address of grantor same as beneficiary
7. If return is for an estate, has a United States Estate Tax Return been filed? (Answer "Yes" or "No") No. If answer is "No," will such a return be filed? "Yes" ☐ "No" ☐ "Uncertain" ☐ (Check which.)

## DECLARATION (See Instruction F)

I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been examined by me, and to the best of my knowledge and belief, is a true, correct, and complete return.

(Signature of person (other than taxpayer or agent)  
preparing return)

(Date)

(Signature of fiduciary or officer representing fiduciary)

(Date)

(Name of firm or employer, if any)

110 So. Normandie, Los Angeles, Calif.

(Address of fiduciary or officer)



(Testimony of Frederick I. Richman.)

The Court: At this point, counsel, we will recess your case for a few minutes while I take up another matter on our calendar, but which shouldn't require very much time. I had planned to take the afternoon recess at this time, although we took it earlier.

(Whereupon, other court matters were heard.)

Q. (By Mr. Enright): Directing your attention to Exhibit H, the income tax return, does it reflect yourself as one of the beneficiaries, as receiving the income for November and December 1953? [454]

A. It does.

Q. Did you receive the income?

A. I did not.

Q. Was any portion of that money, that is, November's collections, taken off by the Receiver on December 1st?

The Union Bank, the December collections are still a part of this fund accounted for in the Receiver's accounting, is that right?

A. That is correct. The fiduciary return shows——

Mr. Whyte: Objected to. There is no question pending.

The Court: Do you desire to further explain your answer, Mr. Richman?

The Witness: I do.

Q. (By Mr. Enright): Proceed.

A. Fiduciary tax return, Exhibit H, shows as having been attributed to me for the year 1953 from Richman trust, the sum of \$27,019.72. Whereas



(Testimony of Frederick I. Richman.)

in fact, I only received from the Richman trust for the year 1953 the sum of \$19,887.50.

The figure which I used on my individual tax return was \$19,887.50, because I am a cash basis taxpayer.

But the figure the Internal Revenue, Director of Internal Revenue will be checking on will be the figure of \$27,019.72. I can expect an audit as a result of this return.

Mr. Whyte: Now, I am going to object to this line of [455] testimony and ask that this answer be stricken upon the ground there is no showing of materiality. There is no showing these people are, that the Receiver has prepared the return in any manner that was improper or otherwise than pursuant to his instructions and conversations with the employees of the Director of Internal Revenue.

The Court: The answer is in. The objection comes too late, so the answer will stand. I deem the line of inquiry irrelevant, so it should not be pursued further.

Mr. Enright: The relevancy, in my opinion, your Honor, was the fact that the Receiver testified on direct that he had rendered services in preparing an income tax return.

The Court: Another question.

Q. (By Mr. Enright): Now, directing your attention to the subject of surcharges, does the Receiver's report show there was petty cash in the sum of \$785.00 under his control as of 5:00 p.m. February 28, 1954?

(Testimony of Frederick I. Richman.)

Mr. Whyte: Won't the report speak for itself there, your Honor?

The Court: Yes, it will. I take it this is only to initiate a line of inquiry and to pinpoint it.

The Witness: The Receiver's report shows that when he took over he was chargeable with \$785.00, but as of February 28, 1954, there is no accounting for the \$785.00.

Q. (By Mr. Enright): Did you make a computation of the [456] rents collected by the managers for the month of February, as to the total amount of rents collected? A. I did.

Q. How did that amount compare with, or what was the difference, if any, between that amount, shown by the Receiver for the month of February?

A. The managers show they collected—

Q. Do you know the net difference, Mr. Richman? A. \$1,290.59.

Q. That is, the collections for February 26th, 27th, 28th? A. That is correct.

The Court: How much?

The Witness: \$1,290.59.

Q. (By Mr. Enright): For what period?

A. Well, it is the amount that is necessary to balance the amount shown, that the managers of the individual buildings collected for the month of February, with the amount shown in the Receiver's report.

The difference arises in that the Canterbury, the manager collected \$9,059.59 and the Receiver only received—collected from her \$8,307.31, according to

(Testimony of Frederick I. Richman.)

his report. A difference of \$752.28, which was available for his collection on February 28, 1954.

The Western Arms, the manager's report shows \$4,724.25 [457] available to the Receiver for the month of February 1954, but the Receiver only took from her \$4,185.94, leaving a balance of \$538.31, which the Receiver could have collected February 28, 1954. Or a total——

Mr. Whyte: As to both statements made by Mr. Richman, that the Receiver could have collected such and such a date, I am going to move they be stricken; pure conclusion on his part and no foundation laid whatever.

The Witness: Mr. Camusi and Mr. Udall collected them on February 28, 1954.

Mr. Whyte: I will accept that statement, Mr. Richman.

Mr. Camusi: I won't. I don't know it is the truth. It is not the best evidence and I object on that ground and ask it be stricken.

The Court: Sustained; granted.

Mr. Enright: Well, I am merely accumulating the evidence here at this time. It is in the deposition of Mr. Hallberg and it is in evidence already.

The Court: Apparently, this is part of the accounting between Mrs. Tidwell and Mr. Richman, and the figures, I take it, will not be in dispute. They are the result of an audit on which auditors probably agree, and I don't think they have any place in this inquiry into Mr. Hallberg's management.

(Testimony of Frederick I. Richman.)

Mr. Enright: I would merely point out the court order [458] was that the Receiver retain moneys under his control, the order of February 26, 1954; this is an item of \$1,290.59 that he did not retain.

I am concluding the evidence on the point. Whether it is relevant or not, I can only state what the court order was.

Q. (By Mr. Enright): The net difference was \$1,290.59? A. That is correct.

Q. Oliver Cromwell was \$2,027.25?

A. That is correct.

Q. You seek those surcharges against the Receiver in this proceeding? A. I do.

Q. Or that they be a charge against the plaintiff in this action?

A. They should be taken into account in this matter.

The Court: We are going to try the case as between the plaintiff and defendant at a later time, as to what shall be done with these moneys.

I will keep under submission this matter of the settling of the Receiver's account and fixing his compensation until that other matter is decided.

Mr. Enright: Thank you, your Honor. That is acceptable to our side. We merely want the moneys to be taken into consideration.

Mr. Whyte: I would like to inquire of the court and [459] inquire of Mr. Enright, whether there is any intention now to shift the position which was expressed this morning, when Mr. Fussell was here, to the effect you were not seeking to charge the



(Testimony of Frederick I. Richman.)

surcharge to the Receiver personally for any of these claimed items.

Now, is that correct, Mr. Enright?

The Court: I understand Mr. Enright is seeking to charge the fund which is in the Receiver's possession.

Mr. Whyte: Very well.

The Court: Is that right, Mr. Enright?

Mr. Enright: Yes.

Q. (By Mr. Enright): And in the same category as the \$2,027.25, Oliver Cromwell payment.

A. Yes.

Q. Now, directing your attention to the subject matter of your November fees under the trust agreement, terminated by the decision of November 30, 1953, did you have a conversation with the Receiver concerning the amount of your fees, and the payment of your fees? A. I did.

Q. Does the Receiver account for your fees as being an obligation of the trust in the amount of \$3,104.33? A. The report so shows.

Q. State the conversation you had with the Receiver.

A. The first conversation was when Mr. Whyte was [460] present, December 3rd, in my office. I mentioned the fact I would be entitled to fees.

Mr. Camusi: I object on the ground of hearsay, insofar as Plaintiff Tidwell is concerned, with the understanding this would not be binding on our dispute as to whether he is entitled to those fees.



(Testimony of Frederick I. Richman.)

The Court: I take it that no one claims the Receiver paid his fees?

Mr. Camusi: We can stipulate——

The Court: Since it is not money paid out by the Receiver, and if it is allowed should be allowed against the fund, and that litigation is to be taken up here on the 18th, we ought to defer inquiry until that time.

The Witness: Other than the statement that the Receiver made, it had never been mentioned to him.

The Court: What difference does it make? What difference does it make if you had a big fight about it or if you negotiated about it. I don't see it makes any difference. You either have it coming from the fund or you don't.

And since all counsel are here, I might mention a tentative thought I have upon that, so that you can deal with it in your research and be prepared to discuss it at the time of the trial.

It seems to me that the judgment in the principal case wiped out the contract, that is, it was a voidable contract [461] and it was voided by that judgment.

Therefore, Mr. Richman is not entitled to the fees as contracted, but it is obvious from the evidence which we have had before that he rendered services, that he was the trustee during this period of time, was the manager of the trust.

I think he would be entitled to fees on a *quotum meritis* basis. If anyone has any argument with either of those propositions,—I can see from the way the

(Testimony of Frederick I. Richman.)

heads are shaking no one agrees with what I have said—you can argue it fully on the 18th; or what would be more convincing, show me authority one way or the other.

Q. (By Mr. Enright): State the conversation you had with Mr. Enright and Mr. Hallberg on that subject matter.

Mr. Enright: Rebuttal testimony. These gentlemen have claimed they rendered services here, and I would like to have the evidence completed on the rendition of their services. That is the object of this testimony.

Mr. Whyte: Objected to as immaterial.

The Court: What services are they going to get paid for on arguing about something which is none of their business? I am not going to allow any fees for discussions about this subject.

Mr. Enright: To Mr. Whyte or Mr. Hallberg?

The Court: No.

Mr. Enright: I will not pursue it further then.

Q. (By Mr. Enright): Now, directing your attention to the testimony of Mr. Mann, the hypothetical question, stating 406 apartments. How many apartments were there, in fact? A. 409.

Q. And the same question pertaining to Mr. Hallberg's testimony as to how many apartments he was managing. A. 409.

Q. He testified 406. Have you examined the Receiver's records pertaining to his filing of his bills?

A. I endeavored to.

Q. And do you recollect his testimony that he

(Testimony of Frederick I. Richman.)

set up, as a part of his services, a system of filing the bills?      A. I do.

Q. What did you find in his records pertaining to the filing of the bill, for example, covering three or four apartment houses for services or materials furnished?

A. I couldn't find them. Billings for the individual houses were in individual piles. The others were just in hodge-podge in another file.

Q. Do you recollect his testimony that he set up a system to determine each house's expenses each month?      A. I do.

Q. Do you have his bookkeeping record here or documents he set up?

A. I have the Receiver's books here. [463]

Q. Point out the accounting, if you can, showing the expenses per house for each month.

A. The Receiver has endeavored to set up columns in the book for the individual houses, as far as individual expenses are concerned, against that particular house.

However, he has not followed through with it and the records as shown would not give the individual expenses of the individual houses in complete detail.

Q. Will you refer to each sheet, so there will be no conclusion on your part, and point it out?

Mr. Whyte: I am going to move that testimony be stricken as a conclusion of the witness. I have no objection to his testifying as to what the facts

(Testimony of Frederick I. Richman.)

show, but as to his conclusion that they do or don't do certain things, I don't think it is permissible.

The Court: Is this book in evidence?

Q. (By Mr. Enright): What do you have before you?

A. I have what purports to be the general ledger of the Receiver.

The Court: It ought to be in evidence. It isn't, and since it will be in evidence before we get through here, I will examine it and determine how much of Mr. Richman's testimony is conclusion and how much is simply orientation of the court to the document. So the motion to strike is denied. [464]

Q. (By Mr. Enright): Proceed, Mr. Richman.

A. The Receiver lists a petty cash fund and divides the amount of \$785.00 between the five houses, as of February 28, 1954, and the prepaid insurance is not segregated to the individual houses, which would be an item to give the expense of the individual houses.

There are numerous pages in the books that merely set forth a title, with no entries on the pages at all. There is one "Inventory." There is another page, "Investments."

"Real Estate Control" is not broken down, to give what the individual building is carried at.

Mr. Whyte: I am going——

The Witness: Neither is the reserve for depreciation of real estate, to show how much the individual building is carried at.

Mr. Whyte: I am going to object to this line of



(Testimony of Frederick I. Richman.)

testimony, in answering, whereby the witness attempts to pick holes and flaws in the method of keeping these books, upon several grounds.

In the first place, this man hasn't been qualified as an expert, a CPA, who is able to tell us whether or not these books are set up in a proper manner.

No foundation has been laid as to his qualifications to state whether or not Mr. Hallberg's method of bookkeeping is improper or wrong in any degree. [465]

Mr. Enright: May I be heard?

The Court: We have had before us, in the principal trial of the case, considerable evidence of Mr. Richman's keeping books on the particular properties over a long period of time.

I think, although he is not qualified to testify as a public accountant would be, that he is qualified to testify from his own experience in the handling of these properties, that a particular subject either is or is not treated in the books.

Mr. Whyte: Well then, my second objection, presuming the court has overruled the first one, is what he is testifying to here, again, is just his conclusion that he draws from entries or omissions of entries in the books. It seems to me that is the court's province and not Mr. Richman's.

The Court: It is the court's, but the court wants to be fully advised on a matter of judging the stewardship of a court-appointed fiduciary. The objection is overruled.

The Witness: The furniture and fixture account



(Testimony of Frederick I. Richman.)

is broken out, as far as the value of the five individual buildings are concerned.

The research for the depreciation of furniture and fixtures is broken out to give the value against each of the five individual buildings—the furniture in each of the five individual buildings. [466]

The improvements is broken out into the five buildings. The question of the account of supplies is not broken out to the five buildings, but there is a notation to F.M. and W.A., which would mean, evidently, those supplies went to the Fountain Manor and the Western Arms.

The unemployment insurance premium sheet has columns headed up for the five buildings, but there is not a figure on that page.

The prepaid taxes have columns headed up for the five buildings, but there is not a figure on that page.

There is a sheet entitled "Utility Deposits," without a figure on the page.

There is a sheet entitled "Deposits, W.C.", which means workmen's compensation insurance, which the credits do not add up to the credit balance shown in the balance column. So it would be impossible to attempt to balance these books, without considerable work on them.

There is a sheet "Advance on Conditional Contracts," without any writing on that page.

There is a sheet of "Note and Accounts Payable," with some writing on it, but not broken down as against the five buildings.

(Testimony of Frederick I. Richman.)

There is a sheet "Accounts Payable," with columns for the five buildings, headed up, but not a figure on that sheet.

There is a sheet "Notes, Short Term," and not a figure [467] on that page.

There is a sheet "Accrued Payroll," with columns headed up for the five buildings; there is not a figure on that page.

There is a sheet of "I.C.A.," which is the employees'—which is the Social Security. That is broken out to the five buildings, as well as the office, which will give the amount of expense attributable to the Social Security for the employees of that building.

The same is relative to the sheet marked "State Unemployment Insurance, Employees." That is broken out into the five buildings.

There is a sheet "Income Tax, Withholding," which is broken out into the five buildings and would give the information as to the income and expense of those five buildings.

There is the F.I.C.A. sheet, Employers, which is broken out to the five buildings.

There is another sheet "State Unemployment Insurance, Employers," which is broken out to the five buildings.

There is another sheet "Federal Unemployment Insurance," with columns headed up for the five buildings, but there is no allocation of the amounts of \$212.59 to any of the five buildings, so the amount of Federal Unemployment Insurance attributable

(Testimony of Frederick I. Richman.)

in the operation of the individual buildings is impossible of ascertainment from that sheet.

There is another sheet headed up "Other Current Liabilities," [468] that has five columns for the buildings, but there isn't a figure on the page.

There is another sheet, "Key Deposit." That has columns headed up for the five buildings, but there is not a figure on the page.

There is a sheet "Trust Deeds Payable," and followed with the "Pacific Mortgage Corporation."

Q. (By Mr. Enright): That is the only trust deed payable?

A. That is correct. It shows here as the check being dated February 28th, which was the payment upon the Oliver Cromwell loan.

There is a sheet "Advance Rentals," and it has columns headed up for the five buildings, but there is not a figure on the page.

There is a sheet "Deposits Held," which has columns headed up for the five buildings, but not a figure on the page.

There is a sheet "Reserve for Contingencies," that has nothing on it.

Q. I think that is adequate, Mr. Richman.

A. Over half of the remaining sheets, I would say, have nothing on them except a heading.

Mr. Whyte: I wonder if I might be permitted to take the witness again on voir dire for just a moment, your Honor? [469]

The Court: Yes.

(Testimony of Frederick I. Richman.)

Voir Dire Examination

Q. (By Mr. Whyte): Would you please turn to one of those sheets where you found a figure, but nothing—turn to one of the sheets where you found a columnar heading and nothing on the page.

A. (Witness complies.)

Q. "Prepaid Taxes"? A. Yes.

Q. Are you able to state positively, Mr. Richman, at no place in the books kept by the Receiver does anything appear for prepaid taxes? In other words, this is a ledger you are looking at, is it not?

A. That is correct.

Q. Is it your testimony that at no place in the Receiver's accounts is the subject of prepaid taxes treated?

A. Well, they head up a page right at that point there (indicating).

Q. Perhaps I didn't make my question clear, Mr. Richman. Again I will inquire whether or not this book is the ledger.

A. I haven't been able to find anything in the cash receipts or disbursements or journal relative to prepaid taxes.

Q. Have you in every instance in which you testified [470] there is nothing on these pages, which are headed with columns, and a ledger, looked at the rest of the books kept by the Receiver, the journal and cash receipts book, to determine whether or not the matter was treated in those books?

A. Yes, accounts payable there was set up in the journal; an accounts payable of \$3,800.00.

(Testimony of Frederick I. Richman.)

There is no entry on this sheet here, "Accounts Payable," which has five columns for the buildings. It is not set up.

The figure I am referring to appears in the journal of the Receiver's books. Journal 2, "Accounts Payable \$3,827.66" is not reflected on the ledger sheet of the accounts payable.

Q. Is that the journal, this black book?

A. That is the journal and cash receipts and cash disbursements.

Q. Very well. Let's start back here at 1, near the first, where you say there is something, that no figures are shown on the page. Will you go back to the first here?

A. (Witness complies.)

Q. Begin at the point you say there are columnar headings and there is nothing shown on the page.

Mr. Enright: This is voir dire examination of this witness, and I would like to develop my point.

My point is that the Receiver is claiming he rendered services, page 5, line 15, and made plans and revision of the accounting system, and I want to demonstrate he didn't render any such services.

The Court: All right. I didn't understand exactly what Mr. Whyte had in mind. I think what he is doing now is properly cross examination and not voir dire.

So, Mr. Whyte, please reserve it until cross.

Mr. Whyte: Very well. I will be glad to defer, your Honor.



(Testimony of Frederick I. Richman.)

Q. (By Mr. Enright): Now, directing your attention, Mr. Richman, to the Receiver's testimony in his petition concerning rendering services in installing tile, did you make an examination of his records, to see what you could find were base entries, to support his page 5, line 9 of his Petition, where he says that he rendered services in regard to tile in 409 apartments? A. I did.

Q. What did you find?

A. The only bills that were—he had paid for tile work amounting to \$61.65 and \$12.00 for tile work.

Q. That is \$73.65? A. Yes.

Q. Now, what did you find in auditing or checking his records, to see what he expended or paid out on account of reconditioning stoves per unit or per stove?

A. Well, I found out he sent out stoves to—factory rebuilt stoves to be reconditioned. One at the Canterbury [472] and two at the Fountain Manor in December, and then again in December he sent one at the Fountain Manor and two at the Western Arms at \$25.00 apiece for reconditioning.

Q. His testimony was \$56.00 would be the reasonable cost at the time he obtained this order for renovation. A. That is my recollection.

Q. Now, directing your attention to page 9, line 14 of his Petition, on the subject matter of painting, particularly 11 per cent of Fountain Manor was painted. First, how many apartments were there in that apartment house? A. 91.

(Testimony of Frederick I. Richman.)

Q. What did you find he expended on account of painting or these five painters they hired? What was the gross amount of money?

A. During the three months' time the gross amount of money expended for painting was \$968.50, payable to Superior Paint Company \$109.25, Proventure \$95.00, Trager \$75.00, Genteel \$200.00; Lorenz \$225.00. Genteel \$50.00, Genteel \$100.00, Erickson \$125.00.

I found that some of the painting in Apartment 315, I couldn't find the bill on that one; it was touched up, \$5.00.

Apartment 220 was bath and touch-up, \$45.00. The others were pretty nearly lump-sum bills and I couldn't compute out that.

Q. Directing your attention to the LaLoma Apartments, [473] page 11, line 4 of his Petition, what did you find from his records he had expended those moneys on painting for?

A. \$275.00, of which \$160.00 was for painting the lobby. He had four ceilings painted at \$10.00 apiece, \$40.00.

He had the bath and kitchen in 107, \$40.00.

Then he had the bath in 304, \$17.00.

And a touch-up in 106, \$4.00.

Q. I am directing your attention to page 12, line 13 of his Petition concerning the Western Arms painting.

What did you find is the gross amount of money he expended there? A. \$663.00.

(Testimony of Frederick I. Richman.)

Q. How many apartments are there in that apartment house?      A. 76.

Q. The Petition alleges 11 per cent of them were repainted.      A. That is correct.

Q. What did you find in the bills?

A. This was one bill that was for \$135.00, Apartment 304. That is what it would cost to have that painted.

\$120.00 for Apartment 119.

There was another bill in a lump sum, with no itemization, \$408.00. I don't know, my experience would be that [474] only three apartments could be painted for the \$408.00.

Q. That is based on your six years of operation or approximately six years?

A. Yes. Unless it includes touch-up at \$4.00 or a bath at \$15.00. Then you could get into a lot of apartments, but not complete jobs.

Q. Now, directing your attention to the \$6,121.40 shown on Schedule C of Receiver, being money expended after March 1st. Did you find any of those posted in the books or records of the Receiver?

A. No, they have not been posted at all.

Mr. Enright: I understood, from the court's statement, it was that, in substance, the matter of plaintiff being chargeable with receiving benefits of some of these moneys will be determined at the same time as these fees.

The Court: Yes.

Mr. Enright: If that is correct, I need not go

(Testimony of Frederick I. Richman.)

into escrow instructions at this time. I think I will say that—perhaps we can agree upon it.

The Court: I think you can agree on many of these things at the pretrial conference.

Mr. Camusi: Yes.

The Court: In fact, I was hopeful you would agree upon so much the matter might be submitted upon an afternoon's stipulations. [475]

Mr. Enright: I will certainly endeavor on my part to do so.

I would like to offer in evidence—I understand there is no objection—the application to the Smog Control Board, which is a part of the Receiver's files or formerly Mr. Richman's file.

The Court: It will be received.

The Clerk: Defendants' I in evidence.

(The document referred to was marked Defendants' Exhibit I and was received in evidence.)

Mr. Enright: That completes my direct examination.

The Court: All right. We will resume the trial of this case tomorrow at 9:45. We will recess until then.

(Whereupon, at 4:00 o'clock p.m., Monday, June 7, 1954, an adjournment was taken until Tuesday, June 8, 1954, at 9:45 o'clock a.m.)

\* \* \* \* \* [476]

BARNEY MANALIS

called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

The Clerk: Please be seated.

Your full name, sir?

The Witness: Barney Manalis.

Direct Examination

Q. (By Mr. Enright): Were you associated in any manner with the Oxyaire Company during the period October 1, 1953, through February 1954?

A. Yes, sir, I was.

Q. What was the capacity of your association?

A. Vice president.

Q. I show you Exhibit I in this proceeding, and ask you if you are familiar with the transaction evidence by Exhibit I?

A. Yes.

Q. An application for it.

A. Yes, sir, I am.

Q. That involves one of the five apartment houses—let's see, which one does this involve?

A. On Normandie. That would be the Cromwell, I believe.

Q. 418 South Normandie.

A. Yes.

Q. I want to direct your attention to the issuance of a permit and approval which were received by Mr. Roy E. Hallberg shortly after being mailed to him by Mr. Richman about December 7, 1953.

As vice president were you aware that a permit and an approval had been issued by the Smog Board about the early part of December 1953?



(Testimony of Barney Manalis.)

A. We were so advised, yes, sir, but we hadn't received them.

Q. What did you do, if anything, in connection with the performance of that contract in the installation of those facilities after being so advised?

A. We immediately contacted Mr. Richman to find the approved plans of the Air Pollution District, if they had been sent to him.

He advised us they had and had been turned over to Mr. Hallberg, who was the Receiver for the Oliver Cromwell Apartments.

Q. Did you later attempt to or contact, in any manner contact Mr. Hallberg?

A. Quite a few times, yes, sir, but never successfully.

Q. Did you talk to anyone at the office or the Oliver Cromwell office of the Receiver?

A. Yes, a Mr. Roy Harrison.

Q. Can you fix approximately when it was that you talked to him concerning this subject matter, that is, the first time you just referred to here?

A. Well, after we were notified that the approval had been sent through from the Air Pollution District, and calling Mr. Richman, we then tried to contact Mr. Hallberg and was put in touch with Mr. Roy Harrison.

He advised us at that time that as the federal receiver for the apartment house he was not bound to the contract, and to hold up and do nothing.

Q. That was in December of 1953?

A. Yes, sir.

(Testimony of Barney Manalis.)

Q. Now, I direct your attention to Exhibit E, being a [480] letter dated January 22, 1954. Did that letter come to your attention as an officer of the Air Pollution Control, Inc., 357 North La Brea Avenue?

A. Yes, sir, that was addressed to me and I received it.

Q. Now, bearing in mind the date there, January 22, 1954, did you have a conversation prior to that time with Mr. Hallberg or Mr. Harrison with reference to this——

A. About a week or ten days prior to that we got a telephone call, or I did, rather, from Mr. Harrison, that they had been cited at the Oliver Cromwell and for us to proceed with the contract and installation.

I advised Mr. Harrison at the time we couldn't do so because we had not received the approved blueprints from the Air Pollution District that they had sent to Mr. Richman, who in turn had turned it over to them.

Q. Was there any discussion during that conversation or a later conversation concerning the subject matter of materials to be used in the installation?

A. Yes, at that time one of the necessary component parts of our unit was an inconel metal that had been frozen by the Government.

I explained to Mr. Harrison that it was not available at that time, that we would try to, on a priority basis, procure some. I couldn't give him a

(Testimony of Barney Manalis.)

definite time for the [481] starting of the installation.

Q. Later was the contract performed?

A. Yes, sir.

Q. And the job completed? A. Yes, sir.

Q. Were the materials available and under your control in December to perform this contract?

A. Oh, yes. Yes, sir, we had it in stock, as a matter of fact.

Mr. Enright: You may cross examine.

#### Cross Examination

Q. (By Mr. Whyte): Mr. Manalis, are you now connected with Air Pollution Control, Inc.?

A. Not actively, no, sir.

Q. When did you leave that concern, sir?

A. Approximately two months ago.

Q. That would be sometime in April of 1954?

A. That is right. As a matter of fact, April 28th was the terminating date.

Q. You mentioned a moment ago having been in short supply on a particular type of metal. I think you used the word "inconel", is that correct?

A. That is correct.

Q. How is that spelled, Mr. Manalis? [482]

A. I-n-c-o-n-e-l.

Q. When you talked with Mr. Harrison, that was sometime in the middle of January, that he told you to proceed to perform the contract?

A. That is right, yes, sir.

(Testimony of Barney Manalis.)

Q. It was at that time that you told him the metal was in short supply?

A. That is right.

Q. How long was it before that metal became available to you?

A. As near as I can recollect, within the next two or three weeks or maybe four. We found some at one of the suppliers that wasn't bound by government priority. That is how we were able to get it.

Q. Do you recall talking to me as attorney for Mr. Hallberg over the telephone sometime during the early part of February, during the course of which conversation you told me that metal was still unavailable?

A. I don't believe I know your name, sir.

Q. I am John Whyte.

A. Well, I do remember a conversation with you, Mr. Whyte. At what time, I am a little hazy.

Q. Very well. Then your testimony is that for some time prior to January 15th, for a period of three to four weeks, the inconel metal, which you needed for this installation [483] at the Oliver Cromwell, was not available to your concern, is that correct?

Mr. Enright: To which objection is made. It is a misstatement of the evidence, that the material was short two or three weeks before January 15th. He did not so testify.

Mr. Whyte: Does the court want to rule?

The Court: I thought you wanted to reframe your question.

(Testimony of Barney Manalis.)

Mr. Whyte: I will reframe the question, your Honor.

The Court: All right.

Q. (By Mr. Whyte): Is it your testimony that for some time prior to about the middle of January 1954, and continuing for a period of three or four weeks, the inconel metal, which you needed for the installation of this incinerator equipment, was not available to your concern?

A. Well, the time prior to January 15th, I don't think it could have been any more than ten days, or two weeks at the most.

Q. Ten days to two weeks?

A. Approximately. In other words, it was right—I can't be exact, but it was right after the first of the year that this government directive came out freezing inconel metal and putting it on priority.

Q. Let's see if I have your testimony correctly. For a period of from ten days to two weeks prior to January 15th, [484] and for the period of from three to four weeks following January 15th, this inconel metal was unavailable to your concern?

A. I think the restriction went even longer, but we were able to find what we did that wasn't governed by priority.

Q. May I have an answer to my question, please, Mr. Manalis?

You have told me, first of all, that for some three or four weeks after January 15th the inconel metal



(Testimony of Barney Manalis.)

was not available for installation of the incinerator at the Oliver Cromwell, is that right, sir?

A. Approximately.

Q. Thank you. You have also told me for a period of from ten days to two weeks prior to January 15th the same situation obtained, is that correct, sir?

A. That is right, sir, yes, sir.

Q. Thank you. The time you talked to Mr. Harrison, in or about the middle of January 1954, did you tell Mr. Harrison either in substance or effect that you would get in touch with the Air Pollution Control District and attempt to do something about this warning notice that had been issued?

A. Yes, sir, I did. And we contacted the department there. We were powerless to do anything in regards to a citation that had been issued, that the owner would have to appear. We so notified Mr. Harrison. [485]

Q. Didn't you tell Mr. Harrison or Mrs. Hallberg that you had contacted the Smog Control authorities and there was nothing to worry about, Mr. Manalis?

A. No, sir.

Q. You never made that statement?

A. Definitely not, not at that time. Are you referring to——

Q. I am referring to the middle of January.

A. That is after a citation had been issued?

Q. After the warning notice had been issued.

A. No, sir, I did not.

The Court: He isn't talking about the citation,

(Testimony of Barney Manalis.)

Mr. Witness. He is talking about a warning notice. Do you understand?

The Witness: Yes, I do.

Q. (By Mr. Whyte): That document should be in evidence. Perhaps we can refresh your recollection.

Mr. Whyte: Do you have that, Mr. Clerk?

The Clerk: Which exhibit?

Mr. Whyte: You will have to let me see your exhibits.

Mr. Enright: It is not in evidence. Here it is (indicating).

Mr. Whyte: Thank you.

Q. (By Mr. Whyte): Mr. Manalis, I show you a notice on the stationery of Air Pollution Control District, dated [486] January 13, 1954, which bears the notation that:

“You are hereby charged with violating Section 24,242 of the Health & Safety Code of the State of California by discharging smoke in excess of that allowed from chute fed incinerator,”

that notice being directed to the Oliver Cromwell Apartment Hotel.

Is it with reference to that notice that Mr. Harrison called you on or about the 15th of January?

A. That is right, sir, yes, sir.

Q. It was in response to that call that you talked to the Air Pollution Control Authorities?

A. That is right, sir.

Q. What did they tell you?

(Testimony of Barney Manalis.)

A. As near as I can remember now, we explained that we had the prints in operation—the prints approved, rather, which they knew. And that we were told to go ahead with the installation of the job.

And as near as I can recollect right now, whoever I contacted at that time said it probably would be O.K. to go ahead.

Q. Did you tell the Smog Control authorities, when you talked to them on or about January 15th, that your company was in short supply of this inconel metal?

A. I may have, sir. I wouldn't swear to it.

Q. It is your testimony that they told you it was all [487] right to go ahead?

A. Well, we had the approved plans to go ahead, yes, sir.

Q. As a matter of fact, as of January 15, 1954, you couldn't have gone ahead without that metal, could you, Mr. Manalis?

A. Not and complete the installation, no, sir.

Mr. Whyte: No further cross examination, your Honor.

Redirect Examination

Q. (By Mr. Enright): As I understand it, Mr. Manalis, you did have the materials throughout the month of December?

Mr. Whyte: Objected to as leading and suggestive; improper redirect examination.

The Court: Sustained.

(Testimony of Barney Manalis.)

Q. (By Mr. Enright): Did you have this type of material in supply in the month of December?

A. We stocked it, yes, sir.

Mr. Enright: No further questions.

Mr. Whyte: No questions.

The Court: May this witness be excused?

Mr. Enright: Yes, we would appreciate that.

The Court: Thank you, sir.

(Witness excused.) [488]

FREDERICK I. RICHMAN,

called as a witness on behalf of the defendants, having been previously duly sworn, resumed the stand and testified further as follows:

Mr. Whyte: Mr. Enright, unless you have some objection, perhaps we had better put this Notice of January 13th in evidence.

Mr. Enright: I have no objection.

Mr. Whyte: Very well. This will be offered as the Receiver's Exhibit next in order.

The Court: Received into evidence.

The Clerk: Receiver's 4 in evidence.

(The document referred to was marked Receiver's Exhibit 4 and was received in evidence.)

5201 SANTA FE AVENUE

LOS ANGELES 58, CALIFORNIA

# NOTICE

NAME OLIVER CROMWELL APT. HOTEL DATE JAN 13 19 54  
(NAME OF COMPANY)  
ADDRESS 418 S. NORMAN AVE PHONE NO. DU 7 2261  
(STREET, NUMBER, ZONE) LA CITY —  
(CITY OR COMMUNITY)  
RE PREMISES AT — CITY —  
(STREET, NUMBER, ZONE) — CITY —  
(CITY OR COMMUNITY)

YOU ARE HEREBY CHARGED WITH VIOLATING SECTION 24242  
OF THE HEALTH AND SAFETY CODE OF THE STATE OF CALIFOR-  
NIA BY DISCHARGING SMOKE IN EXCESS OF THAT ALLOWED  
FROM CHUTE FED INCINERATOR

SERVED BY PHILIP ROBERTS  
SERVED TO LILA MC CONNELL  
TITLE MGR

GORDON P. LARSON  
DIRECTOR

By Philip Roberts  
ZONE 25

No 25780 RECEIVER'S EXHIBIT No. 4

76N590 10/53

LOG 8-3111





(Testimony of Frederick I. Richman.)

Cross Examination

Q. (By Mr. Whyte): Mr. Richman, I believe you testified on your direct examination during the years immediately preceding December 1, 1953, you received management compensation for your services in connection with the former Richman Trust, amounting to ten per cent of the gross income from those properties, is that correct, sir? [489]

A. Ten per cent of the gross income, excluding capital items.

Q. And out of that, I believe you testified that you paid a salary to Mr. Harrison, is that true?

A. I paid all overhead expenses. Salary to Mr. Harrison, office rent, telephone, stationery, typewriter, adding machine.

Q. How much salary did you pay to Mr. Harrison?

A. \$450.00 a month.

Q. In addition you paid your own office rent?

A. That is correct.

Q. Telephone?

A. Yes.

Q. Typewriter?

A. Yes.

Q. Stationery?

A. Yes. Postage.

Q. Postage.

The Court: You maintain an office other than your law office in the Subway Terminal?

The Witness: No; it was the same office.

Q. (By Mr. Whyte): Now, I believe you testified that your law practice consisted of several different things, apart from your management of the Richman trust.

(Testimony of Frederick I. Richman.)

I understood you to say that you organized corporations, [490] is that right, Mr. Richman?

A. On occasions, yes.

Q. Did you also draw contracts for clients?

A. Yes.

Q. What tax work, if any, did you do for various clients?

A. Prepare tax returns for a number of clients; handled with the then Collector of Internal Revenue, or, the agent in charge.

Q. You had other books of account in the office that reflected the affairs of other clients, Mr. Richman? A. Yes.

Q. Did Mr. Harrison keep up those books, in the course of his duties as your secretary?

A. He did.

Q. You dictated a letter to another client, with reference to the formation of a corporation or the drafting of an agreement, did you dictate that letter to Mr. Harrison?

A. Mr. Harrison took my dictation when he was the only one in the office. For a time I had a stenographer that took dictation and typing.

Q. For how long was Mr. Harrison your only assistant?

A. From about August 1952 on.

Q. You were away from the office and away from the——strike that. [491]

You were engaged in rather extensive litigation concerning the trust estate with your sister, Mrs. Tidwell, were you not, Mr. Richman?

(Testimony of Frederick I. Richman.)

A. I was.

Q. When did that litigation commence?

A. January 1952.

Q. It continued until, say, until within a few months ago, when this case was settled?

A. This is still part of it, I believe.

Q. During the course of that time, did you consult with your attorney in preparation for the trial of that action?

A. I did.

Q. Were those consultations rather extensive?

A. Depending upon the court hearings that were coming up.

Q. When did those court hearings take place, Mr. Richman?

A. Very frequently. I couldn't tell you, without checking over, to find out the number of times; the court register.

Q. Were you present in court at all those hearings or substantially all?

A. Not all of them, but a good many I was present.

Q. When did the actual trial of the case take place? [492]

A. It started in May 1953 and went for, I believe, about eight days and then was continued to September and went for about 12 days.

Q. Between those intervals you were in consultation with your attorneys, in preparing the case for trial or resumption of trial?

A. As I was needed.

Q. I further understood you to testify that the

(Testimony of Frederick I. Richman.)

rents which were collected during a comparable period, December 1, 1952, to February 28, 1953, amounted to some \$97,404.58.

Do you recall those figures, Mr. Richman?

A. Whatever the figures were, whatever I testified to.

Q. I further understood you to testify that the figures, that the figures showing the rents collected during the period December 1, 1953, to February 28, 1954 were \$95,066.83. Is that right, Mr. Richman?

A. Whatever the figures were; those figures were taken from the Receiver's report, as being the amount shown on the Receiver's report, but then to which I added the \$1,290.59, to arrive at the total of \$95,066.83, being the rents the managers collected during February, but which the Receiver did not collect.

Q. I understand, Mr. Richman. So that the total rents for the three-month period, December 1, '52 to February 28, '53, exceeded by approximately \$2,337.75 the rents collected [493] during the period December 1, 1953, to February 28, '54, is that right?

A. That is correct.

Q. Is it your testimony that the rents collected from the apartment houses during your regime as trustee were somewhat or substantially in excess of those collected by Mr. Hallberg during his tenure of office?

A. They were in excess by the difference between the two figures.



(Testimony of Frederick I. Richman.)

Q. You made the statement, during the course of your direct examination, you never had a bank account like Mr. Hallberg, to do business with, is that right?

A. No, that is not correct. I said I never had a bank account like his, except during the time that the Villa Carlotta had been sold.

Q. Whatever your statement was, I took it down as close as I could, and I had you quoted as, "I never had a bank account like that to do business with."

In substance, that is your testimony, that your bank account wasn't comparable to the one Mr. Hallberg was managing, is that correct?

A. That is correct. I never operated with that much cash in the bank except during the period immediately after the sale of the Villa Carlotta.

Q. Yet it is your testimony that for comparable periods [494] of time the rents collected under your regime were several thousand dollars in excess of those collected by Mr. Hallberg, is that right?

A. For the period 1952-53, for the comparable period that the time the Receiver was in.

Q. Now, you stated that you saw me at the hearing in the Municipal Court on or about February 1st, and I rendered no services whatever at that hearing.

Did you know for whom I was appearing at that hearing, Mr. Richman?

A. Mrs. McConnell.

Q. Did you see me approach the bench and join

(Testimony of Frederick I. Richman.)

with Mr. Enright in requesting a continuance of the matter for some three weeks?

A. I heard Mr. Enright request for the thing, making the statement on there, and you said that was agreeable to you.

Q. How long were we all present there in the Municipal Court that morning, approximately?

A. I don't recollect. He had other matters on the calendar that were heard first, and came through. The particular matter here took about three minutes.

Q. We were there somewhere in the neighborhood of three-quarters of an hour, were we, Mr. Richman, either waiting around or hearing? [495]

A. I couldn't say.

Q. You mentioned a conversation which you had with Mr. Hallberg shortly after December 1, 1953, in which you claim that he told you he was operating a 40-unit apartment building, is that right?

A. That is correct.

Q. Are you certain he didn't tell you that that was a 14-unit building, Mr. Richman?

A. No, it was a 40-unit on East Colorado.

Q. You are positive of that, sir?

A. I am.

Q. He told you that the apartment building was on East Colorado Street in Pasadena?

A. He did. I was particularly cognizant of the fact, because at one time I had looked rather completely at a building on East Colorado, with the prospects of buying it for the trust.

(Testimony of Frederick I. Richman.)

Q. You were familiar with this building Mr. Hallberg told you he was operating?

A. He didn't tell me what building it was. I was familiar with a certain section of East Colorado. I was wondering whether it was the same building I had been looking at.

I asked him what the address was, and he told me that he had been told not to discuss matters with me. [496]

Q. You called Mr. Harrison quite frequently during the course of the receivership, didn't you, Mr. Richman?

A. I never called Mr. Harrison except to report something that had come in to me, that was reflecting my credit on my accounts, and that was all. And would receive the assurance it would be taken out. Each time I asked for Mr. Hallberg; he was never in.

Q. Did you testify, in your direct examination, that you went out to see Mr. Harrison, not with reference to your credit, but with reference to this criminal citation that had been issued on a Saturday afternoon?

A. I certainly did.

Q. Didn't you further testify that you talked to Mr. Harrison on two or three other occasions and asked for information from him concerning the operation of the trust?

A. No, I did not.

Q. I will let the record speak for itself.

A. I asked him relative to the payment of some of these bills I was being called about.

(Testimony of Frederick I. Richman.)

Q. Mr. Harrison had been your bookkeeper and in your office for about how long, Mr. Richman?

A. He had been my secretary since August of 1952.

Q. How much longer than that had he been in your office, if at all?

A. I think about two months. My former secretary [497] stated she was leaving and would train another. He came in there and worked under her for about two months.

Q. Mr. Harrison had testified on your behalf during the course of this litigation, had he not?

A. No.

Q. He never appeared in court for you?

A. No.

Q. You mentioned the public liability insurance policy covering these five apartment houses. I believe the question was put to you by Mr. Enright, as to whether or not any of your property was covered by that policy, and your answer was no. Is that right? A. That is correct.

Q. Would your answer be no if I asked you whether or not any of your household employees were covered by that policy?

A. My answer would be no, too.

Q. Will you state that under oath, Mr. Richman? A. On the liability policy.

Mr. Whyte: Is that policy in the files here, Mr. Enright?

Mr. Enright: I only know that your Receiver

(Testimony of Frederick I. Richman.)

and Mr. Camusi have brought records here. What there is here I don't know.

Mr. Whyte: I would like to ask Mr. Camusi's associate [498] present here if he would undertake to find the policy of the compensation insurance, which was in force immediately prior to Mr. Hallberg's term of office and produce it here in the next session, if that is convenient.

Mr. Powsner: It may be necessary to get it from Mr. Udall, however.

Mr. Whyte: Thank you very much.

Q. (By Mr. Whyte): You mentioned the fact, when you looked over the files, Receiver's files, the bills were all scrambled up and jumbled up. Is that right, Mr. Richman?      A. That is correct.

Q. When did you look at those files?

A. The early part of March 1954, at the Oliver Cromwell.

Q. You say the early part of March. Just when do you mean?

A. No, I believe it was March 30, 1954. I have the notation in my diary.

Q. March 30, 1954?      A. Yes.

Q. At that time those files were in the possession or under the control of Mrs. Tidwell, were they not?

A. Well, they were under the control of the court order of February 26, 1954. I requested to see them and was told they were still at the Oliver Cromwell, and I could [499] go out there and see them.



(Testimony of Frederick I. Richman.)

Q. Let's not fence around with one another, Mr. Richman. You know that, do you not, after you sold your half interest in these properties to Mrs. Tidwell she took over the books of account and all the properties? A. No, I do not know——

Mr. Enright: I object on the ground the question is argument as to what constitutes "fencing around."

The Court: Overruled.

The Witness: I didn't know she took over the books of account and the records. I had been informed previously that any records of the Receiver that I had wanted to see, I would have to obtain a court order for it. That any records prior to the receivership, I could see any time by going out there.

Q. (By Mr. Whyte): In any event, when you looked at these records and claimed you found the bills in a jumbled condition, you found them in such condition on March 30th of 1954?

A. That is correct. However, I was given files by Miss Marr of Mr. Udall's office, stating she didn't know what they were, they were the Receiver's files, and those files were in just as jumbled a condition as all the others.

Q. Your permission to examine those files March 30th came from Mr. Udall's office?

A. Came from Mr. Martin's office. [500]

Q. Mr. Martin's office? A. Yes.

Q. Thank you. Now, you mentioned a conversation which you had with Mr. Hallberg and myself

(Testimony of Frederick I. Richman.)

shortly after the 1st of December, 1953, in which you told us about your management fee for November 1953, is that right, Mr. Richman?

A. That is correct.

Q. Did you ever submit a bill to Mr. Hallberg requesting payment of that fee?

A. I was never requested to submit a bill. I did not submit one. On the occasions I talked with Mr. Hallberg, he said, well, give him time to get straightened out and it would be paid.

Q. You say you never did submit a bill to him?

A. No.

Q. You never demanded payment of that fee from Mr. Hallberg?

A. I did not know what amount the fee would be, because it was based on the income in November and he had all the records of November. He would have to compute it.

Mr. Whyte: I have no further cross examination.

#### Redirect Examination

Q. (By Mr. Enright): Concerning the subject matter of your 10 per cent under the terms as you have stated it, did you from time to [501] time obtain operating moneys for the operation of the trust, on your own credit? A. I did.

Q. And what was the maximum amount you ever made available for the operation of the trust?

A. About \$250,000.00.

Q. During your tenure as operating agent of the trust, was there any—you have already testi-

(Testimony of Frederick I. Richman.)

fied as to the increase in the value of the assets, have you? I think you did. Is that your recollection? A. I don't recall.

Q. What was the approximate value of the assets of the trust when you became trustee and agent on January 1, 1946?

A. Approximately \$375,000.00.

Q. What was the value of those assets as of February 25, 1954?

A. About \$1,200,000.00.

Q. That is, the plaintiff paid \$600,000.00 cash for one-half of the assets, is that right?

A. That is correct.

Q. During the time that you were agent, manager of these assets, did you ever employ more than one person to work in your office, in which office the trust was being administered? [502]

A. On occasions I have had four or five employees in my office. When the trust litigation started I cut down on all outside work and just concentrated on the defense of the trust litigation, and very small amount of other business.

Q. The 10 per cent fee was agreed to at the time you conveyed one-half the assets in the trust, isn't that correct?

A. No, the 10 per cent fee was agreed to approximately a year and two months prior to the time the trust was created.

Q. At the time the contract, the trust agreement was made, did you contribute one-half the assets to the trust? A. I did.

(Testimony of Frederick I. Richman.)

Mr. Whyte: I object to that on the ground the documents will speak for themselves, as to what he contributed and what agreement was reached.

The Court: What about it?

Mr. Enright: We are merely introducing re-direct evidence as to the circumstances of the 10 per cent fee. One of the circumstances is that the witness, who received the 10 per cent, conveyed half the assets into the trust.

The Court: What about that part of the objection which is based upon the well-known rule that the document should speak for itself?

Mr. Enright: I will introduce the trust agreement. I think it is a part of the records. I will offer the trust agreement in evidence. I do not have it physically here, but [503] it is a part of the court records.

The Court: We will take notice of it, as it appears in the court records.

Mr. Enright: May it be marked an exhibit?

The Court: Yes, give it a number, Mr. Clerk.

The Clerk: It will be Defendants' J in evidence.

(The document referred to was marked Defendants' Exhibit J and was received in evidence.)

Q. (By Mr. Enright): Directing your attention to Exhibit J, did you, as trustor under the terms of that agreement——

Mr. Whyte: I would like to see the exhibit, if you are going to direct somebody's attention to it.

Mr. Enright: I haven't one here conveniently



(Testimony of Frederick I. Richman.)

available, unless the court files are here. I assumed you were familiar with the trust agreement, Mr. Whyte.

The Clerk: Do you want me to get it from the clerk's file?

The Court: If it is not here and you need it, the clerk will get it from the Clerk's Office. The files have been so voluminous he doesn't carry the files in here.

Mr. Enright: Do you need it now, Mr. Whyte?

Mr. Whyte: If you are going to examine the witness on it, I have a right to see it and a right to cross examine on it. [504]

I may say I think this is all immaterial, anyway.

Mr. Enright: But it is very material to us how you arrive at 10 per cent. You contribute half the property it is a whole lot different then than a person contributing nothing.

I will direct questions to another subject matter.

The Court: Well, Mr. Enright, of course, I am quite familiar with that trust agreement. If you want to find out things in it for my consideration, I will consider them whether Mr. Richman testifies upon them or not.

Mr. Enright: I am quite sure the trust agreement does not recite, as a part of it, the inventory of the property conveyed. In other words, it was set up as a naked trust, contemplating the conveyance of property into the trust.

My more informed witness shakes his head, that



(Testimony of Frederick I. Richman.)

I am in error. But that is what I have to find out, I guess, from the document.

I am quite sure it is within the knowledge of most people, and I supposed Mr. Whyte's, that Mr. Richman did convey half of the assets into the trust. That is the point——

The Court: Really, I don't see that makes much difference on computing what compensation shall be allowed Mr. Hallberg.

Mr. Enright: If that could be agreed, that it was a fact Mr. Richman did convey half the assets, I can proceed on [505] another subject matter. If not, why,——

The Witness: I believe the books of the Richman trust are here and will show that in the books.

Q. (By Mr. Enright): Is that an answer to my statement, Mr. Richman?      A. Yes.

The Court: We accept that statement as evidence.

Mr. Whyte: I beg your pardon, your Honor?

The Court: I commented that, although it was a statement, rather than in answer to a question, we accept it.

Mr. Whyte: I didn't hear the statement.

The Court: All right. The reporter will read it.

(The record was read.)

The Court: What they will show is Mr. Richman contributed half of the corpus of the trust.

Q. (By Mr. Enright): Now, Mr. Richman, I want to be clear on this record. Mr. Whyte asked you about compensation insurance. And I am quite

(Testimony of Frederick I. Richman.)

sure he also used the term "public liability insurance" in connection with the subject matter as to whether or not your property or your employees were covered by either one of these policies.

If his question contemplated two different policies, would there be any difference in your answer?

A. Yes.

Q. Let's get this straightened out, so we understand. [506]

A. The public liability insurance was entirely for the trust. It included no coverage for me whatsoever or anything that I owned. The policy belonged to the trust.

The compensation policy was my personal policy and the trust employees were picked up on—through my personal policy on that. That policy could not be transferred to the Receiver, because it would leave me open with my personal employees. So the Receiver took out a new compensation policy, paid a deposit of \$400.00 for it, to be used up with premiums, with a quarterly audit, which was the matter that was discussed the other day, with the refund on that deposit. It is money belonging to the Receiver and under his control, subject to the amount he used.

Q. As to the testimony the other day about the Receiver stopping payment on one of the insurance policies, which policy was that?

A. That was the public liability policy.

Q. And later he paid the premium upon that policy?

(Testimony of Frederick I. Richman.)

A. That is correct. He set it up as an account payable as of December 31st and paid it sometime in January.

Q. Did you have any conversation with him about that time that he stopped payment, or participate in a conference with him, with any other person, on that subject matter as to whether or not your property was covered by that public liability policy? [507]

A. I did.

Q. You did? A. Yes.

Q. Is that the conference had at Mr. Dulley's office, that you have already testified concerning?

A. That is correct. That was a conference at Mr. Dulley's office on December 4, 1953.

Mr. Enright: I have no further questions.

#### Recross Examination

Q. (By Mr. Whyte): I would like to have some clarification on this 10 per cent of gross that you received, Mr. Richman. Let's take the year 1953 as an example.

During that year your 10 per cent gross, assuming you had been in office through December, would have amounted to something in the neighborhood of \$40,000.00, would it not? Not figuring the deductions for a moment. I am talking about the total you would receive 10 per cent of the gross for.

A. I don't believe so.

Q. Let's get to it and see what it was, Mr. Richman. Can you tell me what books those figures are contained in?

(Testimony of Frederick I. Richman.)

A. I think we can get at it quicker from the tax return that was filed as an exhibit yesterday.

Q. Mr. Richman, I am going to take a period of a year prior to December 1, 1953. In other words, from December 1952 [508] through November 31, 1953.

I show you this book of account, pages headed "Management Fee," and the following figures appear in the columns:

December fee \$3,321.81; January fee \$3,280.03, or it may be \$3,380.03 here. Which is that, Mr. Richman? A. That is "2." It is "32."

Q. Then there is a notation I can't read here.

A. "Adjustment."

Q. "Adjustment" to January 31, '53. Is that an addition to the fee up above? A. Yes.

Q. February fee \$3,082.07; March fee \$3,359.86; April fee \$3,083.30; May fee \$3,026.57; June fee \$2,972.29; July fee \$3,176.35; August fee \$3,022.74; September fee \$3,068.89; October fee \$3,004.22.

Now, can you tell me where the fee for November is set up on the books, which you have not yet collected?

A. It is not set up. The Receiver should have set it up or paid it or charged it, but he has done nothing about it, other than show it in his report as a payable of the receivership.

Mr. Whyte: I wonder, for the purposes of examination, your Honor, if I might be permitted to call Mr. Hallberg and ask him to point out where in the books the fee for November is shown? [509]



(Testimony of Frederick I. Richman.)

The Court: Yes. I don't think it is pertinent to this inquiry. I am wondering why you are laboring it so. It is something that is perhaps going to become material to the controversy between Mrs. Tidwell and Mr. Richman, but how does it have any bearing at all upon what compensation Mr. Hallberg is to have?

Mr. Whyte: I think the figures will show, your Honor, that Mr. Richman received, for comparable years period, somewhere in the neighborhood of thirty to forty thousand dollars.

The Court: He received that under a contract which the court has found to be unconscionable and excessive.

Mr. Whyte: I understand, your Honor. Then I won't pursue the matter any further, if the court feels it is immaterial.

Q. (By Mr. Whyte): Just one or two questions, Mr. Richman.

When I was at your office with Mr. Hallberg in the early part of December of '53, I seem to recollect that you had something on your door which indicated that you had a mortgage company in your office, is that true?

A. That is correct, Consolidated Mortgage Company.

Q. Were you the president of that concern?

A. I am.

Q. What relation, if any, does that bear to the Richman trust? [510]

A. None.

Q. That was one of your additional enterprises?



(Testimony of Frederick I. Richman.)

A. That was just about the only one since the litigation started. I resigned my interest in Modern Machine Works and Wood Ice and Gas Company, to take on the litigation.

Q. You were carrying on that mortgage company business for about how long prior to December of 1953?

A. I became president in January 1950.

Q. Mr. Harrison looked after the books of the mortgage company?      A. He did.

Mr. Whyte: I have no further recross examination.

The Witness: Could we have a recess?

The Court: We will take a short recess.

(Witness excused.)

(Short recess taken.)

Mr. Enright: Defendant rests.

Mr. Whyte: There will be a short redirect examination of Mr. Hallberg, your Honor. [511]

### ROY E. HALLBERG

recalled as a witness on his own behalf, having been previously duly sworn, was examined and testified further as follows:

#### Direct Examination

Q. (By Mr. Whyte): Mr. Hallberg, did you at any time ever tell Mr. Harrison, either in substance or effect, that you were not bound by the

(Testimony of Roy E. Hallberg.)

contracts which Mr. Richman had made with the Air Pollution Control, Incorporated?

A. I certainly did not.

Q. Were you present in the court when Mr. Richman testified that he had a conversation with you on or about the 4th of December, while you were traveling around to the various apartment houses, during the course of which you allegedly told him you were operating a 40-unit apartment building on East Colorado Street? Did you hear that testimony?

A. I certainly did.

Q. What, if anything, did you say to Mr. Richman in that connection?

A. I said I had a 14-unit apartment building. We were riding in a car at the time he asked that question.

I said, "A 14-unit building and it is off East Colorado." I didn't say where.

Q. Speaking now of the Western Arms Apartment building and Mrs. Kennedy, the manager, did Mrs. Kennedy have instructions [512] as to what to do in the event the refrigeration system became defective or operated improperly?

A. Yes.

Q. What instructions had you given her?

A. To call the refrigeration company whose name she had on file and whose telephone number she had on file.

Q. Did you give similar instructions to the other managers?

A. Yes.

Q. Did those instructions cover not only re-

(Testimony of Roy E. Hallberg.)

frigeration but other services in the apartment houses which might run into difficulty?

A. Yes.

Q. What other services?

A. Plumbing, for instance.

Q. There was some testimony by Mr. Richman to the effect that utility bills, particularly during the month of January, were not paid promptly when due.

Can you explain how that came about, Mr. Hallberg?

A. Well, I believe he was referring to December bills, wasn't he?

Q. Either December or January.

A. Well, we had a \$17,000.00 tax bill to pay in December. We had very little cash when we took over the building. And we did a little juggling of some of those [513] accounts payable in order to assure ourselves of enough to cover the tax payment.

Q. Because of the large tax payment that you mentioned that you deferred payment of those utility bills?

A. That is correct.

Q. I direct your attention to the general ledger, being one of the books of account which was kept by you during your period of receivership, and I am going to start about the point where Mr. Richman testified there were certain blank pages in this ledger.

Let's begin here with the account reflecting unemployment insurance premium. There is a break-

(Testimony of Roy E. Hallberg.)

down for five different apartment buildings, but no figures appear on that page.

Can you explain that to the court, if you please?

A. Why, yes. We set up the account here, not only for the immediate records—you understand, the books were mostly kept on a cash basis. We did not go back into the previous management to pick up the unexpired insurance and set it up.

Mr. Enright: I move to strike the witness' statement "We set it up", as a conclusion on his part.

The Court: Granted. Show who did it, if you think it is important.

The Witness: I worked on that and directed at that time [514] Mr. Harrison to set this up, so that these entries could be made at the proper time.

Q. (By Mr. Whyte): When was the proper time to make any entries in this unemployment insurance premium account?

A. Well, your unemployment insurance premiums are paid in advance. They are taken from the payments made to the individual people who are working for the trust. And at the end of three months those are supposed to be picked up. We hadn't reached that period yet.

Mr. Enright: I move to strike the answer on the ground it is a conclusion of the witness, when you break off a payment for this type of insurance where a receivership is involved, and he terminated his receivership at 5:00 p.m. February 28, 1954.

The Court: Denied.

(Testimony of Roy E. Hallberg.)

Mr. Whyte: The last statement was, "We hadn't reached that period yet."

Q. (By Mr. Whyte): When would that period have been reached, Mr. Hallberg?

A. In March.

Q. Sometime after February 28, 1954?

A. Yes.

Q. Turning to the next page in the ledger, which appears to be blank, headed "Prepaid Taxes," there is a breakdown for Canterbury, Fountain Manor, LaLoma, Oliver Cromwell, [515] and Western Arms, but no figures appearing on the page.

Can you explain why that page happens to be blank, Mr. Hallberg?

A. That was just put in there for the time that that account might be needed. We hadn't reached a point where it was needed.

Q. Is it good bookkeeping practice to set up an account for prepaid taxes in connection with keeping books of account of this character?

A. It is quite——

Mr. Enright: Objection is made on the ground it calls for a conclusion of this witness, what good bookkeeping practices are.

The Court: You might qualify him. I think you did it once before, I am not sure. Let's be sure; qualify him.

Mr. Whyte: Very well.

Q. (By Mr. Whyte): Mr. Hallberg, you are a graduate—tell me again from what university did



(Testimony of Roy E. Hallberg.)

you graduate? A. Northwestern University.

Q. What degree did you receive there?

A. Bachelor of Science in commerce.

Q. What training, if any, did you have in accounting?

A. I did two years' public accounting work out in the field.

Q. What accounting experience have you had in California? [516]

A. Oh, the experience I have had here is carrying our own records and our own books and the companies I was with, Hall Industries—I set that up back in Missouri—and at the present time I do have to go into books or records of various companies.

Q. Did you keep the books on account at the Morgan Construction Tooth Corporation?

A. I did that.

Q. And your two years of public accounting work out in the field, where was that carried on?

A. In Chicago.

Mr. Whyte: I submit that is sufficient qualification, your Honor. The man knows what good accounting practice is.

The Court: Ask your question then, based upon the foundation, and see what happens.

Q. (By Mr. Whyte): Based upon your experience that you have just related to the court, is it good accounting practice to set up an item for pre-paid taxes in books of account of this character?

Mr. Enright: To which objection is made on the

(Testimony of Roy E. Hallberg.)

ground it calls for a conclusion of the witness. The witness is not qualified.

The Court: Overruled.

The Witness: Ordinarily you try to set up accounts that [517] will be in use sometime during a fiscal period, and this was one item that quite often is used.

Q. (By Mr. Whyte): It is a good accounting practice? A. It is, definitely.

Q. Turning to the next sheet in the ledger, which is blank, "Utilities Deposits", will you explain why that sheet is blank?

A. There were no deposits made for utilities, so far as I know.

Q. Is it good accounting practice to anticipate the possibility there will be utility deposits and show that entry in your ledger?

Mr. Enright: Same objection.

The Witness: That was put——

Mr. Enright: Just a minute. I object on the ground it calls for a conclusion of this witness, what is good accounting practice.

The Court: We will have to consider it as a bookkeeping practice, rather than accounting practice. This man has qualified as to general commercial administration. He is qualified with respect to the bookkeeper's level, rather than the accountant's.

Q. (By Mr. Whyte): I will change my question to whether or not it is good bookkeeping practice to anticipate there may be utility deposits, to set

(Testimony of Roy E. Hallberg.)

up a sheet in your ledger to [518] pick up those items?      A. It definitely is.

Q. The next sheet in the ledger, "Deposits Workmen's Compensation Insurance", contains several figures, so I will pass over that.

The next sheet, "Advances on Conditional Sales Contracts". That sheet appears to be blank.

Will you state why you set up the sheet for "Advances on Conditional Sales Contracts" and why it is blank?

A. It was conditional as for the operation of the building at—from time to time you may have to make a deposit, and there hadn't been any transaction that required it during our period.

Q. Is it good bookkeeping practice to anticipate there may be advances on conditional sales contracts in connection with the operation of apartment buildings?      A. It is.

Mr. Enright: To which objection is made on the ground it calls for a conclusion of this witness.

The Court: Overruled. I take it that you would get the same answer as to each one of those pages, Mr. Whyte, so I hope you are not going to burden the record.

Mr. Whyte: I don't wish to, your Honor. I think as to some of these pages the answer will be that the entries are reflected in the journal. So far we haven't come to any [519] pages in which the entries are—he has explained why there are no entries in some instances, that the entries are re-

(Testimony of Roy E. Hallberg.)

flected in this other book of account which was kept.

The Court: Why not proceed to that class of entries then?

Q. (By Mr. Whyte): Let's just go over these briefly and you can state whether or not your answer would be the same or whether it would be different, because the entries are reflected in the journal.

Take the sheet "Notes and Accounts Payable", which contains various items on it.

I will pass that.

Mr. Enright: I will object to the question on the ground it assumes a fact not in evidence, he has a journal. His previous testimony was he had no journal.

The Court: You might lay a foundation.

The Witness: There was no previous testimony there wasn't a journal.

Mr. Whyte: Just keep quiet, Mr. Hallberg.

Mr. Enright: I will stand on the record of the witness' original testimony.

The Court: Let's have a foundation as of now, in any event, so that one can look back at the transcript of the questions you are asking, and find a foundation immediately before the sequence of questions. [520]

Q. (By Mr. Whyte): Mr. Hallberg, I direct your attention to this large black book. The pages are headed "Records of Journal Entries", and I will ask you to identify that book for me, please.

(Testimony of Roy E. Hallberg.)

Mr. Enright: Object on the ground it calls for a conclusion of the witness, as to identifying that book as it being a journal or otherwise. It is obvious he is attempting to have the witness to testify in his opinion it is a journal; he is not qualified.

The Court: Can't a bookkeeper testify in his opinion a book is a journal? Objection overruled.

Mr. Enright: I don't think so, as a matter of opinion.

The Witness: This definitely is a journal.

Q. (By Mr. Whyte): Was that book kept in your custody or control during the three-month period of the receivership? A. It was.

Q. Are the entries which are shown therein reflections of transactions which took place at or substantially about the time as they are reflected in this book?

A. Well, the journal is mostly used for transferring of amounts from one account to another. And it isn't a matter of a transaction at all.

Mr. Enright: I move to strike——

The Witness: Once in a while you do run into transactions that you do put in a journal. But these were mostly [521] closing and things like that.

Q. (By Mr. Whyte): I didn't make my question clear, Mr. Hallberg. As to the items which are shown in this journal, are those items placed in the book at or substantially near the time of the transaction which they purport to reflect?

A. Yes.



(Testimony of Roy E. Hallberg.)

Q. Is this book, which you have identified as a journal, one of the books which was kept in the regular course of your business as the Receiver of those apartment buildings? A. It is.

Q. Very well. Having laid the foundation, I will proceed here with the ledger.

The "Accounts Payable" sheet is blank. Is that blank for the reasons which you have heretofore specified, as to the preceding blank pages?

A. That is correct. Can I elaborate on this?

Your accounts payable on a cash basis, where you do not enter your bills as they come in, but enter them as they are paid, certain times when you want to close out the books you will lump them all together and enter them in your journal, and from there they are transferred to certain accounts where they are set up. They are afterwards reversed—entries are reversed and it is taken out as they are paid.

Q. I am going through the remaining pages, which [522] appear to be blank, and in the interest of saving time——

The Court: Mr. Whyte, where is this important to the immediate inquiry before the court?

Mr. Whyte: The impression was sought to be created by Mr. Richman these books had been set up in a way where pages had been left blank, as though nothing had been done.

Now, to the extent that the court thinks it is necessary—and I don't want to belabor the point—I want to show the reason why these pages were

(Testimony of Roy E. Hallberg.)

left blank and why nothing is shown on them. I don't want to go beyond what the court feels is necessary.

The Court: I don't feel it is necessary. The court is given to examining these documents, and while I would make a very poor bookkeeper, I have considerable theoretical information on the subject.

Mr. Whyte: If the court doesn't feel it is necessary that settles the matter.

No further examination, your Honor.

#### Cross Examination

Q. (By Mr. Enright): Mr. Hallberg, you didn't make any of these entries in this journal or ledger?

A. No, I did not. I had a bookkeeper doing that.

Q. Mr. Harrison?

A. Mr. Harrison and Miss Findeisen, yes. However, Mr. [523] Harrison did mighty little in that book.

Q. Oh, he did? Are you familiar with his handwriting?

A. Yes.

Q. Are you familiar with Miss Findeisen's handwriting?

A. Naturally.

Q. Miss Cosgrove's handwriting? A. Yes. Say, can I keep those here?

Mr. Whyte: What is this?

Mr. Enright: That is the one marked for identification, as soon as you examine it.

May this document be marked for identification?

The Clerk: Defendants' K for identification.

(Testimony of Roy E. Hallberg.)

(The document referred to was marked Defendants' Exhibit K for identification.)

Q. (By Mr. Enright): I direct your attention to Exhibit K for identification, and ask you if you can identify the handwriting appearing at the end of it? A. Yes.

Q. Whose handwriting is it?

A. Miss Cosgrove's.

Q. You received that document?

A. Yes, I saw this.

Q. Who is Miss Cosgrove?

A. Mrs. Hallberg. [524]

Q. You received this document about December 22, 1953?

A. I can't tell you the date now.

Q. Approximately that?

A. I wouldn't know. I saw it.

Q. Did you see the Paragraph 7, and I direct your attention to your previous testimony concerning the Oxyaire matter, and reading as follows:

"The Houdry catalyst for the Canterbury—Arthur Jan was at the C.A. yesterday wanting to make measurements. This morning I contacted Mr. Barney Manalis (the man who obtained the contracts from Mr. Richman). I explained Mr. Hallberg's appointment, and told him that both matters were in suspension for the time being;"

Did you see that?

Mr. Whyte: I am going to object to the witness being interrogated about his document, on the ground it is hearsay. This document purports to

(Testimony of Roy E. Hallberg.)

be a memorandum from Mr. Harrison. Mr. Harrison is not here.

The Court: It is merely a question of whether he saw it.

Mr. Enright: I will offer it in evidence. He has identified it.

The Court: It will be received.

(The document heretofore marked Defendants' Exhibit K was received in evidence.)

Q. (By Mr. Enright): Do you recollect the question just before Mr. Whyte interrupted?

A. Will you state it again?

Q. You recollect seeing this Paragraph 7 concerning the installation of the smog control equipment, as being under suspension for the time being?

A. Yes.

Q. Were you or were you not advised by Mr. Harrison that he had advised Oxyaire to suspend performance of that contract?

A. No.

Q. But you saw this document?

A. The only thing that was being held up for was the approval of Mr. Whyte.

Q. You saw the document?

A. Yes.

Q. It is from Mr. Harrison, isn't it?

A. That is correct.

Q. And your wife, Miss Cosgrove, signed it?

A. She didn't sign it. She just put a note on the bottom there.

Q. You received it about the time the document bears, the date?

A. I can't tell you now.

(Testimony of Roy E. Hallberg.)

Q. Were you in, about the apartments, during the week [526] of December 22nd?

A. I managed to get there quite often, yes.

Q. On the week end?

A. Sometimes on a week end. Sometimes during the week, as I told you before.

Q. You got there December 24th, the day before Christmas, didn't you?

A. That happened to be one day I was there.

Q. Now, directing your attention to the handwriting in this ledger, will you point out any portion of it that is not in Mr. Harrison's handwriting?

A. I can show you lots of it. There is a whole page not in his handwriting (indicating).

Q. Now you are referring to February 1954?

A. Here is some more (indicating).

Mr. Enright: May we have that one page——

Mr. Whyte: Let's identify the page for the record here.

Mr. Enright: Are you through?

Mr. Whyte: The witness is referring to a page headed "Month of February 1954", which seems to be page No. 8. This is a ledger?

Mr. Enright: Are you through, Mr. Whyte, if you please?

Mr. Whyte: I am merely trying to be helpful.

The Court: Are you through with this particular——

Mr. Whyte: I am all through. Go right ahead.



(Testimony of Roy E. Hallberg.)

Just so [527] the record shows what you are talking about.

Q. (By Mr. Enright): Now, Mr. Hallberg, you refer to a sheet No. 8 bearing an entry at the top, "Month of November 1954". A. All right.

Q. Just a moment, if you will, please, sir.

A. O.K.

Q. That pertains to the expenditures made for the month of February and the expenditures made under your direction on or about March 7th?

A. This does not contain all expenditures for the month of February.

Q. My question wasn't whether it contained all the expenditures for February. It pertains to the expenditures made about March 7th or after the telephone call on a Sunday evening, and you directed someone there to issue checks covering indebtedness incurred during February, doesn't it?

A. That is correct, yes.

Q. Now, whose handwriting is that?

A. Miss Findeisen's.

Q. Miss Findeisen's? A. Yes.

Q. You are referring to page 7, also?

A. Yes.

Q. Whose handwriting is that? [528]

A. Miss Findeisen's.

Q. And that involves the expenditures made after February 28th, does it not, 1954?

A. No.

Q. Now, your first check was No. 332, wasn't it?

A. Yes.

(Testimony of Roy E. Hallberg.)

Q. That involved an expenditure on February 1, 1954? A. That is right.

Q. Who drew that check?

A. That looks like Harrison's.

Q. Yes. And it covers checks down to 366, doesn't it? A. That is correct.

Q. Now, the checks after check No. 370 were drawn by whom?

A. That was Miss Findeisen's.

Q. Was that in her handwriting, the stubs?

A. Yes.

Q. I direct your attention to stubs 372 to 374. Tell me whose handwriting that is.

A. Miss Findeisen's.

Q. The next, 375 through 377.

A. Same.

Q. 378 through 380. A. Same.

Q. 381 through 383. [529] A. Yes.

Q. Is Miss Findeisen's? A. Yes.

Q. 384 through 386.

A. Miss Findeisen's.

Q. Will you turn the pages and state whether or not any of those checks were drawn by Miss Findeisen?

A. Checks are all in her handwriting.

Q. Just a moment. All of them through the end of that book, the stubs? A. Yes, they are.

Q. All right. Now, I direct your attention to the Citizens Bank stub of the check issued. Whose handwriting is this? A. Miss Cosgrove's.

(Testimony of Roy E. Hallberg.)

Q. Now, I want to refer back to Citizen's Bank check No. 482, the stub. Who drew that check?

A. Miss Cosgrove wrote that one out.

Q. Did she write out the checks after that date, commencing with 483, the check dated March 8, 1954?

A. Will you state that again?

Q. Did Miss Cosgrove draw the checks commencing with No. 483 on——

A. She drew that one.

Q. 484, did she draw that one? [530]

A. She did.

Q. Did she draw all the checks thereafter appearing in this Citizens Bank statement through check stub No. 500? A. Apparently she did.

Q. Now, those were the checks covering the approximate six thousand dollars paid after March 7th? A. Yes.

Q. Miss Cosgrove drew those?

A. She drew those that you—the stubs you showed me there, she wrote.

Q. Now, directing your attention to the stubs for Nos. 501 through 508,——

Mr. Whyte: Do you want to identify that as a Citizens Bank book, too, Mr. Enright?

Mr. Enright: Being stubs Nos. 501 through 508 of the Receiver.

The Court: Mr. Enright, I am wondering how this fits in as proper cross examination.

Mr. Enright: Rendition of services.

(Testimony of Roy E. Hallberg.)

The Court: Wasn't that what the man went into on his principal case and on this rebuttal he is called here to simply give his conversation of a certain limited few transactions which had been testified to against him?

We are not going to reopen the entire examination of his services now. [531]

Mr. Enright: It is to rebut what I conceive to be the Receiver's conclusion that he rendered services in preparing these books and records.

I want to demonstate that he rendered himself, so far as he is concerned, no services. A Miss Cosgrove drew some checks for him after he, the Receiver, had phoned you, your Honor, on March 7th, Sunday evening, and then they went out there and his wife, Mrs. Hallberg, wrote some checks, and that, I say, is not rendering services as a Receiver.

The Court: If you will have the various handwritings identified, I will run through those and see who wrote what.

Mr. Enright: That is what I was doing at the very time——

The Court: Let's not take these checks seriatim. We will be here all day on this case, and I have a jury coming in at 1:30.

Mr. Enright: There are only these remaining checks.

Q. (By Mr. Enright): Mr. Hallberg, isn't it correct that the checks 501 through 527 is the total of the checks you had issued?

(Testimony of Roy E. Hallberg.)

A. These were written by Miss Cosgrove, as I said before.

Q. Now, directing your attention to check No. 519, that is for \$123.88, is that correct?

A. That is right. [532]

Q. And that was issued to Jean Findeisen?

A. That is right.

Q. Was that for payment for her services for working——

Mr. Whyte: Again I am going to object. This is not proper cross examination; outside the scope of the direct examination.

The Court: Sustained.

Mr. Enright: I offer to prove through the witness that he has paid a sum of money for the making and issuing of these checks, the services rendered after March 1st, through this canceled check.

I will next ask that a check here be marked for identification.

The Clerk: Defendants' L.

(The document referred to was marked Defendants' Exhibit L for identification.)

Q. (By Mr. Enright): Directing your attention to Defendants' L for identification, do you recognize the handwriting upon that document?

A. Yes.

Mr. Whyte: Same objection, outside the scope of the direct examination.

The Court: I will allow this one.

Q. (By Mr. Enright): Now, you identified the handwriting on the face of the document. I direct



(Testimony of Roy E. Hallberg.)

your attention to the [533] endorsement. Whose handwriting is that?

A. Must be Jean Findeisen.

Q. Do you know?

The Court: Do you recognize it?

The Witness: I recognize—it is apparently in her handwriting. I wasn't there when she signed it.

The Court: It looks like her handwriting?

The Witness: It does.

Q. (By Mr. Enright): She received that sum of money?      A. Yes.

Q. She rendered services attending to the books of the receivership for the sum of money evidenced by this check?      A. Yes.

Mr. Enright: I offer Exhibit L in evidence.

The Court: Received into evidence, although it seems to me it is proving what has already been proven. Generally speaking, it is sufficient to prove a matter once.

(The document heretofore marked Defendants' Exhibit L was received in evidence.)

Mr. Enright: No further questions.

Mr. Whyte: I have just two questions, your Honor.

#### Redirect Examination

Q. (By Mr. Whyte): Mr. Hallberg, you recollect about when you gave me, as your attorney, the contracts which Mr. Richman had entered [534] into with the Air Pollution Control, Incorporated, for examination by me?

Mr. Enright: Objected to as improper redirect.

(Testimony of Roy E. Hallberg.)

There has been testimony on it at least twice, once through Mr. Hallberg and once through Mr. Whyte.

The Court: Sustained. I would like to have the Receiver's explanation, though, of the delay in having the air pollution control work done.

Would you like to tell me in a few words what brought about a delay and how come you got cited into court?

The Witness: The contracts were returned by Mr. Whyte with the statement that it was perfectly in order and to go ahead. I gave the—everything I had to Mr. Harrison and told him to mail that to the manufacturer of the smog control unit.

About the time that—that, incidentally, was about the 1st of January. Two weeks later, when I received the warning notice, I asked Mr. Harrison about it and he brought out the blueprints out of the file; they had not been mailed. At this time I told him to get them over there immediately, and explained also that that should have been done at the time I first directed him to mail them. It caused a week and a half or two weeks' delay right then and there.

The Court: Was anyone ever fined or was any financial penalty exacted from the trust because of the delay? [535]

The Witness; None whatsoever.

The Court: That is all I have.

Mr. Enright: You seek extraordinary fees for that service.

(Testimony of Roy E. Hallberg.)

Mr. Whyte: Objected to. The document which was filed with the court will speak for itself.

The Court: Objection sustained. I understand that the Receiver asks for a reasonable fee covering everything, and Mr. Whyte has broken his down into ordinary and extraordinary.

Mr. Whyte: No further questions of Mr. Hallberg, unless the court has something more.

Mr. Enright: I have something more.

#### Recross Examination

Q. (By Mr. Enright): You made no entries in your diary, did you, concerning this January 1st or approximately January 1st attention to the Oxyaire matter, did you, that you have just testified to?

A. Apparently not, although at the time I explained to you all entries were not made there. I didn't go into detail on every little matter.

Q. You did make an entry on January 13th, "Received notice re Oliver Cromwell incinerator. Oxyaire vice president said he would handle with authorities. Urged him to get on our job. Said drawings not received." [536]

Did you make that entry?

A. I did. That is when I found they hadn't been sent.

Q. You didn't transmit the drawings until January 22nd, as shown by Exhibit P?

A. I told Harrison at the time to get those over and in two days later—three days later I found

(Testimony of Roy E. Hallberg.)

they hadn't been sent, and I dictated a letter and we got them on the way.

Q. You signed this letter that states, "This letter will confirm Mr. Harrison's telephone conversation with you on January 15th"? A. Yes.

Mr. Enright: I have no further questions.

The Court: All right, Mr. Hallberg. [537]

\* \* \* \* \*

Los Angeles, Friday, June 18, 1954, 9:00 a.m.

The Court: Good morning.

This is a day we have 30 minutes' argument on each side. How do you want to divide it, 30 minutes in a stretch or have an opening and then a reply?

Mr. Whyte: I prefer to open and close.

The Court: Proceed to open. We also have a jury trial on here today, which will make it necessary for us to keep ourselves to the hour, and we had better take up that matter with Mr. Camusi on Monday.

Mr. Whyte: Before I commence, your Honor, may I ask for instructions with reference to two bills which have been contracted by the Receiver. One in the sum of \$89.20 for one copy of the depositions of Roy Hallberg and John Whyte.

The other in the sum of \$100.00 as the fee to be paid to the expert witness, Mr. Mann, who appeared here on behalf of Mr. Hallberg and testified as to the reasonable value of his services.

The Court: What are the depositions?

Mr. Whyte: You mean which depositions were they?

The Court: Yes.

Mr. Whyte: They were depositions of Mr. Hallberg and myself, which were taken by Mr. Enright, and we requested one copy. [541]

The Court: Well, you had better coast on your credit for a little while, and I will give you instructions when this case is decided.

Mr. Whyte: Very well. I feel that the court has a very adequate picture of the testimony which has been presented at this hearing. I am not going to take much time.

I simply want to point to three or four of the salient features of the testimony and some of the points which were stressed in the objection filed by the defendant Richman.

Let me turn to page 7 of the Objections filed by the defendant and refer there to the matters for which the Receiver was originally attempted to be surcharged. Those matters are three in number, that is to say, the principal ones are three in number.

First of all, that the Receiver failed and neglected to collect rents from the five apartment house managers for February 26, 27, and 28, 1954. That sum was approximately \$1,200.00, I believe.

Secondly, that the Receiver did not collect petty cash funds in the hands of the managers in the sum of \$785.00.

Thirdly, that the Receiver made a payment on the trust deed note covering the Oliver Cromwell,



which was due March 1, 1954, in the sum of \$2,-027.25.

Much stress was laid upon those during the course of the testimony. Let me say right now that since it has been conceded [542] by the defendants that they are not attempting to surcharge Mr. Hallberg personally for those amounts, but that they will look to the funds in the bank account to make them whole, in the event that this court finds they should be made whole, as between themselves and the plaintiff Mrs. Tidwell.

In view of that posture of the case, any dereliction of duty on the part of Mr. Hallberg in this connection would go simply to a diminution of his fees.

Since he is not being surcharged personally, anything that he may have done that was wrong in this connection can simply operate to reduce the amount of the fee which the court will otherwise allow.

Let's take up each item individually and see whether Mr. Hallberg did do anything wrong, was he negligent, was he ineffective in any manner.

First of all, as to the collection of the rents for February 26, 27, and 28, the court will recall the testimony of both Mrs. Hallberg and Mr. Hallberg to the effect that Mr. Udall, the manager for Mrs. Tidwell, stated on Sunday afternoon, February 28th, that the managers were not to permit the Hallbergs to pick up those rents. In other words, they were prevented by the act of Mrs. Tidwell's agents from collecting the rents for that period.

Secondly, let me turn to the deposition of Mr. Hallberg, at page 106, line 13: [543]

“Q. ‘The Western Arms and the Canterbury managers reported that they had so much outstanding they would prefer to make the collections over the week end. It is not good business to make collections when the banks are closed. The apartment houses had safes for safekeeping the receipts, whereas the Receiver’s office had none. The Receiver was advised by his attorney to act in no capacity the morning of March 1st, Monday, and consequently the March 1st funds on hand could not be picked up. The Receiver’s report mentioned this fact only in relation to the total receipts for February not being complete for comparative purposes.’

“Now, is that the reason, as stated here, why you did not pick up the moneys from the two apartments on March 1st?

“A. That’s right.”

In other words, both because the plaintiff’s agent refused to allow the Hallbergs to pick up the rents and so instructed the managers, and because there were no adequate facilities for keeping large amounts of money over the week end, moneys couldn’t be deposited in the bank. There was no safe at the Receiver’s office at the Oliver Cromwell.

Under those circumstances, I submit that the Receiver [544] has done nothing wrong with respect to his failure to pick up those rents. In any event, no one is hurt. The money is in the bank, sufficient to take care of those payments. There is

no harm done. There is no damage done. Why should the Receiver be penalized?

Secondly, as to the petty cash fund, the terms of the order removing the Receiver from his active duties of management specified that he was to retain moneys in the bank and under his control. That order was given to me to interpret. I advised the Receiver that the money in the bank should be retained by him.

As to the petty cash fund, I was of the opinion that they constituted part of the operating assets of the apartment houses. That the operation of those apartment houses was to continue. That it was, as I interpreted the order, the intention of the parties they desired the operation of the apartment houses should continue in a smooth fashion.

You recall the testimony of Mrs. Kennedy, the manager of the Western Arms Apartment House, as to what those petty cash funds were used for. She said they were used for key refunds, little bills, containers for the can man who evidently picked up the garbage, extra help, and employees from employment agencies, washing windows and walls.

I submit to your Honor that those funds were necessary to the continuance of the operation of these apartment houses. [545] That for that reason the Receiver properly interpreted the order of the court which had its purpose, its basic purpose to permit the operating, the continuance of the operation of the apartment houses, and at the same time to insure control by the Receiver of such money to

pay his attorney fees and any other items which may arise.

Finally, as to the third item, that is to say, the payment on the Oliver Cromwell trust deed, that payment was made, and I believe the check was dated on the 27th of *November*. At that time the Receiver had full power to make that payment. His powers did not terminate until 5:00 o'clock p.m. on the 28th, Sunday.

Mr. Richman himself testified that during the time he was in control of the receivership he had on several occasions made the payments, which fell due on the 1st of the month, before the 1st of the month arrived. I submit that it was a perfectly prudent payment for the Receiver to make, that he should pay an obligation falling due on the 1st of March by a check dated on the 27th of February.

Again, what harm has been done? That was an obligation of this estate, that had to be paid by somebody. If it has inured improperly to the benefit of Mrs. Tidwell, that matter can be adjusted through the moneys in the bank account and through the hearing which your Honor is about to hold, to adjust the rights of Tidwell and Richman. [546]

So I say as to each and every one of those items no harm has been done. Unless your Honor feels that the Receiver has acted negligently in some way, his fees should not be affected.

Let me say just a word about this smog control matter over which Mr. Enright and Mr. Richman made so much. The Receiver told a straightforward



story, which was not contradicted in any way. He testified that he furnished me with the files and contracts the day before Christmas 1953. That I examined those, sent them back to him and told him that the contracts were binding, that he should proceed to have the installation made.

The plans had been furnished to him by Mr. Richman sometime during the latter part of December of 1953. On or about the 1st of January, or shortly thereafter, he instructed Mr. Harrison to send those plans to the Air Pollution Control, Inc. Mr. Harrison did not do so. There was no denial of that testimony. Mr. Harrison did not appear here and deny it.

On or about the 14th or 15th of the month a warning notice was received from the Smog Control authorities. At that point, where Hallberg discovered the plans had not been sent, he asked Mr. Harrison to send them. He asked Mr. Harrison to call the Smog Control authorities, or, rather he asked him to call the Oxyaire group.

Mr. Harrison talked with Mr. Manalis. Mr. Manalis was [547] to do something about it. Then the criminal citation was issued at the end of the month. The hearing was held and subsequently the complaint was dismissed. No fine was ever levied against this estate, no damage was done to anybody except the expenditure of some time and effort in appearing in court and having the proceedings dismissed.

Your Honor will recall the testimony of Mr. Manalis, the vice president of the Oxyaire, or Air



Pollution Control, Inc. He stated positively on cross examination that for ten days to two weeks prior to January 15th, and for three to four weeks thereafter his company was in short supply of a metal which was necessary to this installation. In short, his company could not have made the installation during an extended period of over one month, from on or about January 1st, until after the 1st of February.

Under those circumstances, if the Receiver failed to notify the Oxyaire people promptly, his negligence in that respect, if any, did not proximately cause the result, for the installation could not have been made in any event, because the Oxyaire people couldn't make it.

One further word about what was said about the Receiver's negligence in not visiting the apartment houses often enough, that he wasn't on the job, the court heard the testimony of Mrs. Lipphardt, the manager of Fountain Manor. She said Mr. Hallberg was in her apartment building between seven and [548] twelve times.

Does that sound to the court as though the Receiver wasn't on the job?

Furthermore, the Receiver had a competent bookkeeper. He had his wife, who three times a week picked up these rents and deposited them in the bank. He had help, admittedly, which was competent and which did a good job for him, just like Mr. Richman had competent help when he was in control.

During the last year in which Mr. Richman ran

these properties, he testified he had many other things, he had other things in his office. He was away from the office and in court on numerous occasions in connection with the trial of this case. He conferred with his attorneys regarding strategy. Surely, he didn't devote a hundred per cent of his time to the management of these properties.

Admittedly, neither did Mr. Hallberg, but he did a good job, and the report he rendered shows it. He carried on through himself and his agents competently.

Now, as to the amount of his fees, again there was uncontradicted testimony in the record by an expert witness, that it is customary and usual in this area for apartment house or for managers of real properties of this nature to receive five per cent of gross rents. That, of course, is substantially below what Mr. Richman received. [549]

I will attempt to draw no parallel with Mr. Richman, because the court has already decided that Mr. Richman's fee was excessive. But just a word as to my own fees in the matter.

I have one case for the court which I might cite. This case is *Missouri & K. I. Ry. Co. vs. Edson*. It is an Eighth Circuit case. The opinion was written by Judge Sanborn, and it is reported in 224 Fed., page 79. That case holds, and I will simply state the question which was presented on the first page of the opinion:

"May a court of equity lawfully allow and pay out of the trust funds into the hands of a receiver it has appointed his necessary counsel fees for de-

fending himself against baseless charges of malfeasance in the discharge of his duties as receiver, \* \* \*

The court gave an affirmative answer to that question and an opinion of some three or four pages, and developed the matter rather carefully.

The court, I am sure, in its own discretion, will fix an adequate fee for both the Receiver and his attorney. There is testimony in the record as to the value of the attorney's fees. Mr. Laugharn testified a thousand dollars a month should be proper as to the advising of the Receiver during the receivership.

Mr. Fussell, who appeared here later in the testimony, [550] was of the opinion that from \$1,000.00 to \$1,200.00 was proper insofar as the defense of the Receiver against the charges laid against him by the defendant were concerned.

I would like to reserve whatever time I have left to answer anything that may be said by Mr. Enright.

Mr. Enright: May it please the court, a fair reading of the report of the Receiver would in no manner divulge that the \$2,000.00 paid upon the Oliver Cromwell, March installment, was a March obligation.

A fair reading of the report of the Receiver will result in the conclusion that there is a concealment of the facts that \$785.00 petty cash is funds under the control of the Receiver.

A fair reading of the report will in no manner divulge that there was \$1,290.00 rents that he failed

to collect. He didn't recite that as being something that was still belonging to the fund.

The only thing he said was there was \$2,000.00, not \$1,290.00.

Now, let us not for one moment think that we uselessly filed our objections here. We filed them because there were those three specific items that were conferred upon and given to the plaintiff, and the Receiver improperly did it and had his attorney analyzed it in any manner the order of February 26th he would have to have told the Receiver, "That is petty [551] cash that is under your control. Keep it."

That man wants to be paid \$60.00 an hour or \$30.00 or \$33.00 an hour for that kind of advice. He wants \$3,000.00 ordinary fees.

Let's get this straight once and for all, so far as I am concerned I doubt sincerely whether an attorney, a pure ordinary attorney, rendering only legal services, is worth \$30.00 an hour. I don't care who he is. They are not worth it in the industry.

I speak of basic industries, cement, packing, textiles, garment, and oil, and all the other basic industries. They just don't pay that kind of money for legal services. They might pay it because some attorney has some financial connection, or on some other basis, for services, but for pure rendition of legal services they are not entitled to that amount of money.

I don't want to argue any more about attorneys' fees. If he feels he is entitled to \$3,000.00 for or-



dinary services, \$1,000.00 a month, for going out three days before the Receiver was qualified and telling that Receiver to stop bank accounts and telling the Receiver to go to apartment houses and take moneys before the Receiver had even qualified, and if he expects to be paid \$30.00 an hour for those eleven hours, then I say that would be a complete abuse of discretion and a miscarriage of justice.

I once heard—I don't know the authority for it, but it is quite apropos—the law isn't yet that the rabbits can decide how much cabbage will be left for the owner. Mr. Whyte is no more than any other rabbit. If he thinks he is going to eat up this fund at the rate of \$1,000.00 a month, plus extraordinary services, I am sure your Honor won't go along with that proposition.

We have not levied our objections to the Receiver's failure to collect the petty cash and to collect those rents. We must first go through the Receiver and have an order of this court that that Receiver should have collected that money, because that was the order of this court, to collect that money on February 26th. At 5:00 p.m. February 28th he was to continue to collect those rents.

Now, once the court orders that the Receiver should have, then our rights are protected. I am not interested in going through an endless chain of litigation, so the objections were well taken and properly taken.

But, your Honor, that wasn't the most serious aspect of this thing. I filed a memorandum of points and authorities in support of my objections,



because I feel it my duty to a court to submit authority for what I say or what I propose. And I cited this case of *Cake vs. Mohun*, 164 U.S. 311, because it is one of the earliest cases, and I like to cite the earliest and the latest Supreme Court or leading [553] authority, so the court will know what the law was at the beginning and at the end of our jurisprudence. There the court said:

“In view of the fact that the receiver had never been in the hotel business; that he employed a manager at \$125.00, and a part of the time at \$150.00 a month, and required of him a bond for the faithful performance of his duties; that he was not prevented from giving his usual attention to his business, and ordinarily spent only his evenings at the hotel,—we are bound to say that, if it had been an original question, we should have fixed his compensation at a considerably less amount.”

Then the Supreme Court goes on to explain that we must be reasonable, to protect the Receiver's just compensation, and to protect the owner of the assets. Those words are apropos here.

Here we have a Receiver that paid \$1,800.00 during a period of three months for Mr. Harrison and Miss Findeisen. He had five managers, and he was supposed to devote his time to the attention of these properties. He only spent his week ends.

There is only one reasonable deduction that can be drawn from this, that he spent his week ends. There isn't [554] much conflict in the evidence.

As the receiver in the Supreme Court decision spent his evenings—didn't interfere with his other

business—so this Receiver spent some week ends.

Now, a more recent case is *In Re Pittsburg, S. & N.R. Co.*, 75 Fed. Supp. 292. The court had this to say, as to what should be considered in fixing the fees:

“The considerations that should be controlling with the court in fixing compensation are the nature of the matters administered, the amount involved, the complications attending it, the amount of bond required, the time spent, the labor and skill needed or expended, the degree of success attained under all circumstances, the fidelity to details, the appreciation evidenced as to the responsibilities of the position, the character of said responsibilities, the expedition with which the trust has been administered, in view of results reached, and the method, character, and promptness of the accounting, having regard, as a standard, to what is paid for somewhat similar services in the performance of official duties. \* \* \* The value of the services rendered should not be considered generally but only with reference to the trust administered.”

Now, let's apply that statement of the court to what occurred here. Mr. Hallberg was employed by the County of Orange at \$355.00 a month. He didn't disclose it to anybody, not even his attorney or this court.

He was supposed to spend 40 hours a workweek there, and I am sure he did, beginning a new job.

His wife, Miss Cosgrove, expended some time in picking up the money three times a week. Now, was that fidelity to the details on the part of Mr.

Hallberg? He wasn't available when the gas broke in the Western Arms refrigeration.

I have considerable difficulty, your Honor, in reconciling Mr. Hallberg's conduct in this matter, and I submit it is to be taken into consideration in fixing compensation. His time spent was nominal.

Now, another authority that is very clear, and it, too, is quite recent, is *In Re Insull Utility Investments*, 6 Fed. Supp. 653, at 661, affirmed in 74 Fed. (2d) 510.

The report spoke of the receiver's prior experience and knowledge in these words:

"Another matter—Does the performance of the receivership call for special knowledge and special training? If so, does the receiver who is appointed qualify? A single illustration will suffice. A president of a railroad has reached his position after 40 years of service. He has devoted his entire [556] life and all his time to transportation business. His road goes into receivership, and he is named receiver. He continues to devote his entire time, and his experience is as valuable as a receiver as it was as president of the railroad. Under such circumstances, the court must of course consider the compensation which the appointee received as president of the railroad. The same applies to the receiver of any other utility. If the appointee be an engineer or an operator, whose years of experience especially qualify him and he has technical training supplementing such experience, and he gives all of his time to the task, he should be paid more than one who, though entitled to the

confidence of the court, is not equally qualified to render the service for which the technical experience of the engineer qualifies him.”

Now, let's see what happened in this matter. Mr. Hallberg represented to this court that he had years of experience.

“Mr. Hallberg was for some years associated with a property management operation in Chicago, and has considerable acquaintance and experience in that type of work. Since coming to California he has held various positions with different types [557] of corporations, and has been engaged in the management of property for elderly relatives who have considerable apartment property in Southern California.

“I called him and found that he is available, and I asked him to come in here at about 2:00 o'clock today, so that counsel could meet him.”

Now, he continued on a few minutes later and reaffirmed those representations. The facts are, your Honor, by his own admission—and there is no conflict in the evidence—in 1931 he was involved as an employee of a bondholder of a defunct bank in Chicago.

In 1947 he landed here in California, according to his own admission, and he bought two homes, one house at 85 and the other across the street, and then he invested \$18,000.00 in the Morgan Construction Tooth and drew a hundred dollars a week for a few months, and then he went down to Narmco and drew \$350.00 a month, as he said, assistant to the president, selling fishing poles, and



then he went to work over at the County of Orange.

And, remember, your Honor, he represented to me and to your Honor he had the time available to take on this receivership. Three days, after making that representation in the chambers of this court, he took a full-time job down at [558] the County of Orange.

Now, your Honor, I know the man testified that for about four years he made \$40,000.00 a year in the marketing of wine in New York, or vineyards, and it was before 1947. I don't know what the nature of his services were. I know this, that in the wording of this court's decision he didn't have the qualifications to be a manager of apartment house property in this area. His little diary of data, furnished to him by Miss Cosgrove, evidences very clearly that he knew very little about apartment house management.

Now, under those circumstances, I submit that the man is in this court with very, very unclean hands, to say the least. I know your Honor sought him out to be appointed, but, on the other hand, I say that he should have at least made a full and complete disclosure to your Honor before you confided in him and appointed him.

He drew \$355.00 a month for his services in the County of Orange. He came up here on a few week ends. He sent his wife up here to pick up these rents and deposit them in the bank, and that is about all he did do.

Now, the rule is clear, that the compensation to be paid a receiver is not the compensation or the



rate of compensation paid in private industry. I don't know whether I agree with it or not, but, in any event, the appellate courts have laid down the rule that public officials are not [559] compensated at the same rate as private individuals in private industry. Their rates are lower. That is especially true, I think, in the federal judiciary. Whether it should be that way or not, nevertheless it is a fact.

This man had no risk of any kind or nature on his part. As a matter of fact, Mr. Whyte's diary and the testimony entered in this record shows that your Honor interceded to a degree in obtaining the man's bond for him when he was qualifying, technically qualifying.

Now, they put on an expert witness here at five per cent for a property manager who furnishes everything, who furnishes the Harrison's, the Findeisens, who furnishes the office, who furnishes the telephone, who furnishes all the facilities. It isn't five per cent according to their own expert and the Realty Board at Los Angeles. It is five per cent for collections under \$2,000.00 and it is three per cent for collections over \$2,000.00.

The rents here were far in excess of \$2,000.00 a month. Assuming he had had the qualifications to be a property manager, none of which he had because his only experience in apartment house property, except this incident back in '31 in Chicago, was that he and his wife, Miss Cosgrove, acquired a 14-unit apartment house in 1949, December, and sold it in November 1950. There is no conflict in the evidence on that. Eleven months' ex-

perience with one apartment [560] over there. Does that qualify one any more than this trial has qualified me to be a property manager, and I think I have learned quite a bit during the course of this trial and hearing concerning apartment house managing.

Now, the time the receiver devotes to the administration was commented on in the Insull case. There the court said another important factor in the compensation of the receiver is the time devoted to the work and the character of the work performed.

This man devoted very little time. He was here when he qualified, the first two or three days after the appointment. Then he went to work on a Wednesday down at the County of Orange.

He was here the day before he appeared before this court in support of a petition for authority to renovate and remodel the apartments. He appeared for his fees hearing.

Now, under these circumstances, that is, first, a receiver who undertook to devote his entire time—that is the only reasonable deduction that can be taken from this record at the time of his appointment—who devotes only week ends, at most, and an occasional weekday, who represents that he had qualifications, long years of experience, what compensation is to be paid him is the question. And so far as I am concerned, I am not going to conjecture or speculate or state what I think he should be paid. He refused to [561] express his opinion from the witness stand.

He has been paid \$355.00 each month by the County of Orange. I suppose they should be allowed their expense money or allowed something, but integrity and no concealment is the first basis of all executive employment. You must have integrity first, before you are ever employed. And I submit that it should be considered in fixing his fees.

So far as the attorney's fees are concerned, there was a true base claim, not a basis claim, of objecting to this accounting, and I can't see the wisdom nor the justice nor the reasonableness of any rule of law that will permit a man to come into court and say, "I want \$3,000.00 for my services and if you don't pay them to me you will pay me another thousand dollars, if you object to my \$3,000.00," and that is the net effect of their argument.

They want now \$3,000.00 for ordinary fees. They want extraordinary fees on that smog matter, which I won't further discuss. The record is in black and white.

Then on top of that, they want another thousand dollars for attorney's fees because we objected to paying \$3,000.00 plus extraordinary.

Thank you, your Honor.

The Court: Now, Mr. Camusi, we didn't finish our jury trial yesterday, so I will have that jury back here to finish it this morning. [562]

Can you go forward with the pretrial matter of the Tidwell vs. Richman phase of this case on Monday afternoon?

Mr. Camusi: Yes, that is wonderful. I was going

to ask if I could be excused at 11:00. I have a matter I just can't put over.

The Court: We will continue that phase of this hearing until Monday afternoon.

Mr. Camusi: Your Honor, I am sorry again, but we are starting a will contest case in Orange County Monday. These last three months have been just all out of proportion to what a man can do. I don't know what to say.

The Court: How long do you think the will contest is going to take?

Mr. Camusi: We have estimated it won't exceed ten trial days, and it is a good chance it will be considerably less.

The Court: What about your time, Mr. Enright?

Mr. Enright: Well, I am always available at the convenience of the court. There are three or more members in the firm of Mr. Camusi. They have participated in this proceeding throughout, and I am quite sure one of them can be here. It has always been my experience, in appearing in this court and the other federal divisions of this court, my calendar must be inconvenienced to it.

I feel this matter is one well briefed already. There is very little left, if anything, to be considered on the pretrial. [563]

They have submitted their memorandum, and mine, I think we can stipulate to a few facts, and the matter is submitted to your Honor.

The Court: Can't Mr. Martin or someone else take care——

Mr. Camusi: It has been so bad we have been



about ready to send the secretaries up to try some of the cases. We have five men in the office and we have just been terribly busy. I don't know why it has happened, but the last two months we have just been unable to cope with all the case load we have.

It is one of those unfortunate things, where we haven't been able to put over hardly anything.

The Court: Who is going to try the will contest?

Mr. Camusi: There again we have a very young man in the office who has done all the work on it, and I am coming in the last minute to sit and hold his hand.

The Court: You can start holding it Tuesday morning. We will continue the pretrial on this case until Monday at 2:00.

Mr. Camusi: Your Honor, we are defending a half-million dollar estate, and this boy has been practicing for a year.

The Court: It is going to be the first day of trial and it is his responsibility, and you are going to hold his hand.

We will require someone of your side of the case be here [564] at 2:00 o'clock on Monday.

All right, Mr. Whyte.

Mr. Camusi: Am I excused then, your Honor?

The Court: Yes.

Mr. Whyte: I am certain that the court recognized that Mr. Enright's statement was replete with misstatements of the facts produced in the testimony before this court.

Just to give your Honor a pattern of the dis-



tortion which he represented here, he stated, for example, that the Receiver came in only on week ends. That was denied by the Receiver many times, when that question was put to him by Mr. Enright.

Mr. Hallberg testified positively he came in on occasions during the week, and even worked nights. He stated that two or three days before the Receiver was qualified I went out, I think he said three or four days I went out with him and instructed him to pick up moneys from the apartment house managers, and in that connection spent eleven hours, I note from my time slip, for that day, which was the day before the Receiver was qualified, which was on December 1st—the Receiver was qualified on the 2nd—and I spent about six hours going around with the Receiver and going over to the Union Bank.

He spoke about the Receiver's lack of experience, the only experience he had had was running these properties back [565] in Chicago. Of course, he completely left out of consideration the fact the Receiver had a 16-unit house down here in Pasadena, and another four-unit apartment house in Pasadena. The Receiver and his wife got in and did the actual physical work at those properties, painted, renovated, carpeted.

I think this court was extremely fortunate to have obtained a man of Mr. Hallberg's background and capabilities to fill this job, and I say that in all sincerity.

Mr. Enright talks about the lack of time that Mr. Hallberg put in. What results did he accomp-

lish? That is the testimony. Did he run this thing in a negligent, poor fashion?

Now, let's see how his stewardship compared with Mr. Richman's.

When Mr. Hallberg went in there, there were apartments which hadn't been painted for years. He came into this court and petitioned for authority to revonate. That order was granted. He and his wife saw to the decorating of these apartments and the repainting of them. Mr. Richman didn't do anything like that.

So far as I know, he didn't come into this court with petitions for authority to renovate and raise the standard of these apartments.

The Court: Wasn't it a judicially administered trust?

Mr. Whyte: In any event, Mr. Hallberg was on the job [566] sufficiently to see, in order to keep up the vacancy factor in these apartments and get the maximum for them, that you had to improve the apartments, and he did it.

Secondly, the vacancies were reduced out at the Western Arms Apartment, alone during the first month that Mr. Hallberg took over, from eight to three. Does that look like a poor job of managing apartment buildings?

Finally, Mr. Richman testified that the rents for a comparable period, under his stewardship, were, I believe, \$2,300.00 more from December 1, 1952, to February 28, 1953. If Mr. Hallberg was doing a poor job of managing these apartment houses, how was he able to keep the total rents which he

took in within some two thousand dollars of what Mr. Richmann took in during a comparable period? No telling what the basic economic conditions governing apartment houses might have been during both periods.

In other words, the fact that the Receiver may not have been on the job full time, which we admit, is not the important or controlling factor here. He had responsible agents who were on the job. The results which he accomplished testify to the facts that his administration was a successful one.

As to the nature of his fees, I am sure this court won't overlook the fact this Receiver was dealing with an estate valued at a million two hundred thousand dollars. The Receiver was obligated on a \$75,000.00 bond. When a man undertakes [567] an obligation of that sort, surely, the responsibility which he assumes is worth something, insofar as the compensation which should be awarded him is concerned.

I won't dignify some of Mr. Enright's remarks with reference to my fees. He seems to think that \$30.00 an hour is entirely out of line, despite the testimony of the expert witnesses. I recall Mr. Hubert Morrow, one of the deans of the Bar, testifying in Judge Hall's court, and other attorneys of O'Melveny & Myers, in connection with the Federal Home Loan Bank litigation. They said the services per hour of Mr. Works and Mr. Fussell were \$50.00 an hour, and the value of my services was \$30.00 an hour. That represented the testimony of one of the deans of the trial bar in this city.

I am not going to make any excuse for asking for that figure, in view of the size of the estate here and the matter involved.

This Receiver hasn't misrepresented anything to the court. When he came in here at the time of his appointment he knew nothing about the County of Orange job. He took the job. It wasn't a full-time job. He had to spend eight hours a day. Half of it was taken up with preparation of reports, that he could do at home, which he frequently did at home.

He contacted clients in the evening after office hours, so far as appraisals were concerned. That left him with time, [568] not only to supervise the activities of the Receiver, but to consult with Mrs. Hallberg every evening as to the results of the day's work.

I don't think it is necessary to say any more. As I said at the beginning, the court has an adequate complete picture of the testimony given here. The Receiver and his attorney have supervised the properties worth a great deal of money. They have filed a complete report, and I am going to leave it entirely to the court, to your Honor's discretion, as to what you believe to be a reasonable fee for both of those gentlemen.

Thank you.

Mr. Enright: There may be some uncertainty in the record concerning the deposition of Roy E. Hallberg. I understand it to be received in evidence. I was given the opportunity to move to strike



certain portions, if any, I desired to move to strike. I will waive that motion to strike.

Secondly, I am not certain as to whether or not the deposition of Mr. John Whyte is part of the record. I would like to have it received in evidence, as was Mr. Hallberg's.

The Court: So ordered.

Mr. Enright: Thank you, your Honor.

The Court: I suppose we best consider this matter as submitted until after we have completed the sequel. [569]

Mr. Enright: That is my understanding, and I deem it most advisable.

The Court: There has grown up a habit in this court—I am not speaking of this case—but attorneys have taken to writing letters arguing and re-arguing their cases. The Rules say that shouldn't be done.

I will be glad to receive any memoranda filed with the clerk in the ordinary course. There hasn't been any order in this matter. You haven't asked for permission to file.

Do you want any such permission or have I heard enough?

Mr. Enright: I am willing to submit the matter on the points and authorities and memorandums I have submitted.

Mr. Whyte: I am quite willing, also, your Honor.

The Court: All right. This matter is deemed submitted as of this day. [570]

\* \* \* \* \*



Los Angeles, Monday, June 21, 1954, 2:05 p.m.

The Court: Shall we come on the record?

I suppose the most practical thing is to see if we can arrive at an understanding as to just what the issues are between Mrs. Tidwell and Mr. Richman, and how far those issues can be determined upon the record which has now been made, and in what areas we will need to take further testimony.

What is your view of it?

Mr. Powsner: I think you proposed a certain number of stipulations in your Memorandum, Mr. Enright.

Mr. Enright: Yes. Your Honor, I believe I stated the differences in my Memorandum, that is, the differences between the plaintiff and the defendant.

I further proposed that those differences could be settled upon the present record, although I didn't refer to the present record in my Memorandum, but by the addition of orders already made by the court in this proceeding and a part of the record, plus the escrow instructions executed by both parties, the mutual release executed by both parties, and I would like to add, which I did not refer to in my Memorandum, the Smog Control contract which has been frequently referred to, but I think it is all agreed to so far as the parties are concerned.

That would leave the record in this status: For the [572] court to decide the \$785.00 petty cash fund, the \$1,290.59 rents for the last three days of February, the Oliver Cromwell payment of approx-

imately two thousand dollars, and the services of Mr. Richman for the month of November 1953, the month before the Receiver took over.

Now, I was pleased to observe that upon examining plaintiff's Memorandum that on page 8 of their Memorandum, I think it is line 13, to identify it accurately, concerning the Oliver Cromwell two thousand-dollar payment, plaintiff stated:

"Defendant Richman claims that the Receiver paid the March, 1954, mortgage payment on the Oliver Cromwell trust deed in the sum of \$2,027.25. If that be true that payment should have been made by Plaintiff Tidwell from her own funds and Defendant Richman would be entitled to a credit of one-half that amount."

That is exactly our position on it, so I think that is more or less in a stipulated form, if they desire to——

Mr. Powsner: I think the situation——

Mr. *Richman*: May I finish?

Mr. Powsner: We have that particular check, which is No. 433. In the check, if it so states, that it was for the March 1st payment, I will stipulate it does state that.

As to the conclusion of whether or not it was the March [573] payment, which is considered, according to the agreement, to be an obligation of Mrs. Tidwell, I can't stipulate as to that. There may be other facts or certain information which may arise, frankly, as to that. I don't know what other things might arise.

That is the one item as to which I am uncertain,

but I am unwilling to stipulate completely that Mrs. Tidwell should reimburse the Receiver. I am willing to stipulate that the check has on it the information it has on it, whatever it is.

The Court: And that information truly reflects the purpose of the payment?

Mr. Powsner: Yes, subject to—well, that the information contained thereon is true.

Mr. Enright: I will accept that stipulation.

The Court: You seem to be in agreement with the issues, as Mr. Enright stated them.

Mr. Powsner: I think Mr. Enright has stated correctly the demands he is making upon Mrs. Tidwell. I think he hasn't stated the counterdemand, Mrs. Tidwell's demand against Mr. Richman. I could read the list. There are taxes——

The Court: Well, the purpose in going over all this openly is that it invites an immediate answer to the part that is immediately stated, and thus we can break down the burden that is ahead of us on trial, a little better than [574] by simply taking the attitude that it is all in our respective memoranda.

Mr. Powsner: I understand. In other words, apparently Mr. Enright mentioned four items, which Mr. Enright claims either against Mrs. Tidwell or against the fund.

I agree those four issues are involved, and I think those are the only four demands made by Mr. Richman.

Then there are the demands to be made by Mrs. Tidwell, which create other issues in the case.

There are the real property taxes on the apartment houses, which Mrs. Tidwell paid out of her personal funds for the first six months of 1954. It is her contention that there should be a proration made, so that the first two months' worth of those taxes should be reimbursed to her out of the Receiver's funds. That the first third would be \$4,952.77.

Then, secondly, there are utility bills for a portion of the month of February, which Mrs. Tidwell paid personally, in the amount of \$1,877.50. And again it is our contention that these should have been paid by the Receiver and, therefore, Mrs. Tidwell should be reimbursed out of the funds in the hands of the Receiver for this amount, before any division of that fund is made.

Thirdly, Mrs. Tidwell paid out of her own funds \$2,658.80 for the Oxyaire units. It was our contention that this was an obligation of the trust during the receivership and should [575] have been paid by the Receiver.

Again we contend Mrs. Tidwell should be reimbursed out of the Receiver's funds for this amount.

Fourthly, we claim there was \$4,499.29 collected by the Receiver in February, which amount represented March rents. These went into the fund, and we claim, since they were March rents, Mrs. Tidwell was entitled to them as a whole, and she should be paid those out of the funds before any division is made.

Fifthly, the revenue stamps, in the amount of \$577.50, which were paid by Mrs. Tidwell. We con-



tend these should have been paid personally by Mr. Richman, and we don't feel these should be paid out of the receivership, but paid directly by Mr. Richman out of his personal share after division of the Receiver's funds.

That is five items. I think that is—no, I don't think that completely states our claim. I think there is a claim for \$158.00 as to compensation, or, refund of premium on Workmen's Compensation Policy.

I know Mr. Camusi, in his most recent memorandum, didn't include it. However, he included it in prior memorandum, and I don't want to stipulate he is dropping it.

The Court: Do you want us to understand it is one of the questions before the court?

Mr. Powsner: That is correct. [576]

The Court: What is your view as to evidence to establish these claims? Can I get it from the record, as it has been developed, or will it be necessary to supplement it by the addition of some documents or oral evidence?

Mr. Powsner: What is your position on that, Mr. Enright?

The Court: Mr. Enright has told us he wants us to consider the Oxyaire agreement, the escrow instructions, the release, and I think a check or two.

Mr. Powsner: I think the other evidence and other additions to the record should be considered after we first discuss what agreement we can reach as to the amount paid, and things like that.

For instance, if Mr. Enright will stipulate that



Mrs. Tidwell paid for the taxes, we don't have to introduce evidence she did so, and so on and so forth. And as to the utility bills, also.

The Court: What about that, Mr. Enright?

Mr. Enright: So stipulated. He mentioned the taxes only.

Mr. Powsner: That is right.

The Court: Someone has been ordering transcript of all the proceedings that have been going on. I assume that is a continuing order, or I would have to be taking some notes.

Are you going to have transcript of this? [577]

Mr. Powsner: Yes, we will order transcript.

Mr. Enright: We have ordered transcript.

The Court: I don't know who has. But I slipped into my habit of knowing it has been coming through, relying on a continuance of that.

Mr. Powsner: I think that is reasonable. We will order another transcript. We have discussed the payment on the taxes.

Mr. Enright: May I comment? You left one item out. You are making claim for an escrow fee of \$329.00?

Mr. Powsner: That is right. That was left out of the most recent memorandum, but appears in former memorandum.

Mr. Enright: It is in the most recent, too.

Mr. Powsner: It is in issue, too.

The Court: Are you agreeing that was the escrow fee?

Mr. Enright: I will stipulate they filed an escrow fee of \$329.00, being one-half of the escrow cost.

I will stipulate to that. You did pay it.

Mr. Powsner: I don't know it was one-half of the escrow costs.

Mr. Enright: Then I will stipulate you paid that amount.

Mr. Powsner: Will you stipulate we paid the \$577.50 for Internal Revenue stamps?

Mr. Enright: Yes, so stipulate.

Mr. Powsner: And will you stipulate Mrs. Tidwell paid [578] out of her personal funds charges for utilities for the five apartment houses for portions of February in the amount of \$1,877.50?

Mr. Enright: The amount, I am sure, is less than that amount. And if we can stipulate on all the remaining, for the record, I may be willing to stipulate on that one, also.

The Court: If you are not, it is the sort of matter that is susceptible of such easy proof that you can both probably check your figures.

Mr. Powsner: I think you have five packets of utility bills.

Mr. Enright: I will be willing to submit it on those five packets, if that is your proof.

Mr. Powsner: I haven't looked at the packets.

Mr. Enright: There they are (indicating). Mr. Camusi handed it to me.

Mr. Powsner: That is correct.

Mr. Enright: If that is your proof, I will stipulate they can go into evidence.

Mr. Powsner: I will stipulate they go into evidence. I don't want to stipulate that is the entire case for the utility bills. I understand in those bills

it is shown payment in excess of \$1,877.50, and the excess would represent March payment, but there are \$1,877.50 relating to February utility payments.

However, I find myself in the somewhat awkward position that I haven't examined personally many of the items of debt here. Since I haven't examined those utility bills, we are not willing to rely on those solely for our proof as to this matter.

But I am willing to stipulate they go into evidence for whatever weight they have, and if we feel it necessary that we be allowed to introduce other evidence on that subject.

Mr. Enright: I will stipulate they go into evidence, that is, the memorandum and the bills you have there.

Mr. Powsner: I am speaking of the utility bills.

Mr. Enright: The five utility bills for the five apartment houses.

Mr. Powsner: That is right.

The Court: Does that stipulation include the proposition that Mrs. Tidwell paid those bills out of her personal funds?

Mr. Enright: Yes.

Mr. Powsner: Then there is the payment made by Mrs. Tidwell to the Smog Control people for the Oxyaire unit, \$2,658.80.

Mr. Enright: Well, I am informed the Contract is for a lesser amount. I have seen no evidence for the greater amount.

Mr. Powsner: \$2,658.80.

Mr. Enright: This \$58.80 there (indicating).

Mr. Powsner: You say we are in excess of—

Mr. Enright: Yes.

Mr. Powsner: Can we stipulate it be \$2,600.00, and we can close this matter, I think, quite quickly.

Mr. Enright: That is the amount called for by the Contract.

Mr. Powsner: Well, we will stipulate it is that, and we can argue about the \$58.00. It should be a small argument.

Mr. Enright: O.K. Now, the amount of revenue stamps, I think, is the only remaining one.

Mr. Powsner: I think we stipulated to that.

Mr. Enright: O.K.

Mr. Powsner: No, there are rents for March 1954. We claim that Mr. Hallberg collected in February rents of \$4,499.29, which are March rents.

The Court: Do you have a tabulation of those rents?

Mr. Powsner: I do not have, your Honor, and I haven't seen any in the file so far.

The Court: Is that going to be an issue we will have to take evidence on?

Mr. Powsner: That is what I am going to determine now. They may have definite information to the contrary.

Mr. Enright: Well, I am quite sure we can agree upon the amount of February rents, but before we do——

Mr. Powsner: I think March rents we are referring to.

Mr. Enright: I am quite sure we can agree upon the amount [581] of rent collected in February on account of March rents, but to date we haven't been



able to see the managers' month-end reports for the month of February. As soon as we can spend, say, an hour on those five reports for the five apartment houses, I am sure we can agree or else submit to you——

Mr. Powsner: What you consider to be the correct amount?

Mr. Enright: Yes. It is something that is easy of ascertainment, if you can furnish to us the monthly reports of each of the managers for the month of February, which reflects the rents that were collected in February.

The next question is what portion of that rent was for the month of February and for the month of March.

Mr. Powsner: I will agree to furnish you with these statements. However, I won't agree to be bound by what the books contain. In other words, perhaps, as I said, I have no definite information as to how this sum was reached, and perhaps the books would show a lesser sum. And it would be our position that certain amounts were erroneously termed February rents, but actually March rents, and we would want to prove those by some independent means. I am not sure about that. It would have to be left open.

However, of course, we will submit it to you and perhaps the books will reveal the sum I have mentioned is allocable to March, and you will agree to that. Perhaps it will, I say.

Mr. Enright: Yes. Assuming I did agree, then



we could [582] submit the whole matter to the court.

Mr. Powsner: I think so. Yes, I will stipulate, assuming that you agree the amount is as I have stated.

The Court: You can get together on that agreement at your individual conveniences then.

Mr. Powsner: Yes.

The Court: And bring in a stipulation. It probably will be easier and save your time if we do not have to have a further extension of this pretrial.

Is there any element about which we will have to take oral evidence?

Mr. Enright: None, in my opinion.

The Court: There is the \$58.80.

Mr. Powsner: The possibility is that there will be some oral evidence required on these rents we have just been discussing, the rents collected in February, and claimed as March rents.

The Court: That assumes a lack of success.

Mr. Powsner: That is right.

The Court: If you get together on the \$58.80, and you probably can take your individual files and sit down in conference and you can work out the \$58.80 item and also the rent item.

Assuming you do get together on that, and arrive at a stipulation, do you want to file further memoranda, or have [583] you written enough?

Mr. Enright: I believe I have written enough.

The Court: It seemed to me they were quite full.

Mr. Enright: Your Honor, are you talking about

deferring the filing of further memorandum, in lieu of oral argument?

The Court: Yes. Or do you want to argue orally? Do whatever you like. You know the problem and you know your individual temperaments and how you can best work it out.

Mr. Enright: I would suggest that we be directed to stipulate or not stipulate, say, within a reasonable period of time, five days, or something like that, and then if the court could find time to convenience us for 15 or 20 minutes, that each come in here and orally discuss and argue the exact points involved. We might be able to aid the court in getting to the core of the problem. That would be my thought on it.

The Court: Well, suppose we say that you either arrive at a stipulation or series of stipulations, or abandon the effort prior to the last day of June, and that if you do arrive at a stipulation, that we set the matter for oral argument on July 6th at 9:00 o'clock.

Mr. Powsner: Your Honor, I wonder if it would be at all possible to defer oral argument in this case beyond the month of July. Mr. Camusi has plans to be out of the State during that month. I presume he wants to argue the matter. [584]

The Court: My giving you that date was not simply one of convenience, but I had in mind that I will be out of this division the month of August and will be in vacation during the first part of July, beginning on the 7th.

If you want to put it over beyond the July 6th date, it will have to go into a September date.

Mr. Enright: I would prefer to waive oral argument and submit some kind of a, say, not exceeding four-page explanation to the court before July 6th.

My reason for asking that it be handled in this manner is this: I believe it desirable that the Receiver's fees in this matter all be submitted at the same time.

The Court: I think it is to everyone's advantage to get this tag end of the litigation straightened out, and over.

Mr. Powsner: It isn't my desire to hold up the payment of the Receiver's fee. I don't see that the ascertainment of the reasonableness of his fees or his attorney's fees is dependent on the resolution of the issues between the plaintiff and defendant.

The Court: They rather fall naturally on the same table for consideration. And I would like to have one more bout with Tidwell vs. Richman, and then sign it off.

Mr. Powsner: I understand what you mean.

Mr. Enright: That is my feeling, too, your Honor. It is difficult to work up these matters, analyze them and go in [585] and discuss them, as every time you do there is energy involved. That is why I want to do it all at once.

The Court: Particularly if it is one of these problems that stimulates the recollection of matters that should be considered on others.

See if you can work this out according to the suggestion I have made. If you wish to simply

submit a short informal memoranda on July 6th, I would be happy to accept that in lieu of oral argument, but if you are going to do that, let me know ahead of time so I can know whether to be here at 9:00 o'clock on the 6th.

Mr. Powsner: Mr. Richman and I, or somebody, will get together and come to an agreement as to how the matter is to be conducted, by memorandum or oral argument, on the 6th, and will inform the court of the conclusions we come to.

Mr. Enright: We will meet between now and the 6th and agree to what we can stipulate to and what we cannot.

The Court: Let's have these documents received into evidence now, so the clerk may mark them and I can commence to have them.

Mr. Enright: May I read them off?

The Courtff Yes, read them off and hand the documents to Mr. Whyte.

Mr. Enright: First, a mutual release. This office copy is undated, but it is the form used by the parties, and [586] I think it is agreeable that it be used.

The Clerk: Defendants' A.

The Court: That is admitted.

(The document referred to was marked Defendants' Exhibit A and was received in evidence.)

DEFENDANTS' EXHIBIT A  
MUTUAL RELEASE

Lyda Tidwell, individually and as co-trustee and as beneficiary under Richman Trust, hereby releases each of the following named persons or corporations, their agents and servants of any and all claims, known or unknown, that she may have against any one or all of them, from the beginning of the world to the present time, and each one of the following named persons and corporations, and all of them, their agents and servants, individually and jointly, release any and all claims, known or unknown, that they or any one of them have against Lyda Tidwell, from the beginning of the world to the present time, said persons being:

Frederick I. Richman, individually and as co-trustee and as beneficiary and as agent under Richman Trust;

J. B. Witt;

Witt Ice and Gas Co., a California corporation;  
Modern Machine Works, a California corporation;

Consolidated Mortgage Co., a California corporation;

Formula Products Co., a California corporation;  
Elizabeth Johnson, formerly Elizabeth Pomy.

Dated this.....day of March, 1954.

.....  
Lyda Tidwell

.....  
Frederick I. Richman



.....  
J. B. Witt  
Witt Ice and Gas Co., a California  
corporation,  
By .....  
Modern Machine Works, a California  
corporation,  
By .....  
Consolidated Mortgage Co., a Califor-  
nia corporation,  
By .....  
Formula Products Co., a California  
corporation,  
By .....  
.....  
Elizabeth Johnson, formerly  
Elizabeth Pomy

---

The Court: That is for the court to consider as a true copy of the lease that was potentially executed?

Mr. Enright: Yes. The second exhibit, Exhibit B, the mutual dismissal, dated March 25, 1954, which is a part of the court record. May it be received, the original, by reference?

The Court: Yes.

(The document referred to was marked Defendants' Exhibit B and was received in evidence.)

[Printer's Note: Defendants' Exhibit B is a document entitled "Dismissal with Prejudice" and is set out at pages 124-125 of this record.]

Mr. Enright: Exhibit C, a Stipulation between the parties, dated February 26, 1954, which is a part of the court record.

The Court: It will be received by reference.

(The document referred to was marked Defendants' Exhibit C and was received in evidence.)

[Printer's Note: Defendants' Exhibit C is a document entitled "Stipulation" dated Feb. 26, 1954, and is set out at pages 54-55.]

Mr. Enright: Exhibit D, the Order made by the court, pursuant to that stipulation, which order was dated February 26, 1954, and is a part of the court record.

The Court: That is received by reference.

(The document referred to was marked Defendants' Exhibit D and was received in evidence.) [587]

[Printer's Note: Defendants' Exhibit D is a document entitled "Order" dated Feb. 26, 1954, and is set out at pages 55-57 of this record.]

Mr. Enright: Exhibit E, the escrow instructions executed by both parties.

Mr. Powsner: It is a buyer's and seller's escrow.

Mr. Enright: Yes.

The Court: Received.

(The document referred to was marked Defendants' Exhibit E and was received in evidence.)

## DEFENDANTS' EXHIBIT E

Michele Geiselman

BUYER &amp; SELLER

(Page One)

ESCROW NO. 100-3456

ESCROW INSTRUCTIONS  
BUYER

February 26

1954

CALIFORNIA BANK HEAD OFFICE LOS ANGELES, CALIFORNIA

or to the expiration of the time specified in this paragraph I will hand you  
\$100,000.00 (having paid \$100,000.00 to F. I. RICHMAN outside of escrow and with which \$100,000.00 you are not concerned).

will also hand you a Dismissal with Prejudice and Satisfaction of Judgment in that certain United States District Court Case No. 13742T, Southern District, Central Division entitled "Tidwell vs. Richman."

will also hand you any instruments and/or documents necessary and/or required of me to terminate that certain Declaration of Trust known as "Richman Trust" dated November 1, 1945 and will deliver to my co-trustee, F. I. Richman in the execution of any instruments and/or documents necessary to complete this escrow. I WILL ALSO HAND YOU any additional funds and documents, including notes secured by encumbrances I create, required from me to enable you to comply with these instructions, all of which you are authorized to use and/or deliver provided on or before May 1, 1954 instruments have been filed for record entitling you to procure Title Insurance and Trust Company's Standard Owner's or Joint Protection Policy of title insurance in the issuing Title Company's usual form with its liability for \$200,000.00 as per attached rider

on real property in the COUNTY OF LOS ANGELES STATE OF CALIFORNIA. Viz

MEMO	
Paid outside of Escrow \$	100,000.00
Cash through Escrow	500,000.00
Unpaid Balance of Encumbrances of Record	
New Encumbrances	600,000.00
Total Consideration	

PARCEL 1: The easterly 149.75 feet of the northerly 60 feet of Lot 1 in Block 2 of Beaudry Tract, in the city of Los Angeles, county of Los Angeles, state of California, as per map recorded in Book 1 Pages 401 and 402 of Miscellaneous Records, in the office of the county recorder of said county.

PARCEL 2: Lot 17 of Culver's Hollywood Park Tract, in the city of Los Angeles, county of Los Angeles, state of California, as per map recorded in Book 4 Page 33 of Maps, in the office of the county recorder of said county.

PARCEL 2a: Lot 1 of the Holly Tract, in the city of Los Angeles, county of Los Angeles, state of California, as per map recorded in Book 3 Page 29 of Maps, in the office of the county recorder of said county.

PARCEL 3: The north 21 feet of lot 8, and all of lots 9 and 10 and the south 17 1/2 feet of lot 11 in block 14 of Chapman Park Tract, in the city of Los Angeles, county of Los Angeles, state of California, as per map recorded in book 8 page 54 of Maps, in the office of the county recorder of said county.

PARCEL 4: Lots 22 and 23 of Country Club Heights, in the city of Los Angeles, county of Los Angeles, state of California, as per map recorded in book 6 page 56 of Maps, in the office of the county recorder of said county.

PARCEL 5: Lot 7 and the northerly 50 feet of lot 6 in block 1 of Hollywood Ocean View Tract, in the city of Los Angeles, county of Los Angeles, state of California, as per map recorded in book 1 page 62 of Maps, in the office of the county recorder of said county.

EXCEPTING therefrom the northerly 15 feet of said lot 7, as conveyed to the County of Los Angeles for road purposes by deed recorded in book 1634 page 246 of Deeds.



## Defendants' Exhibit E (Continued)

map recorded in Book \_\_\_\_\_ Page \_\_\_\_\_ of \_\_\_\_\_ records of said county,  
 VESTING TITLE VESTED IN: LYDA RICHMAN TIDWELL, a married woman as her sole and separate property

## OF ENCUMBRANCES EXCEPT:

and Instalment General and Special Taxes for the fiscal year 1953, 1954, including PERSONAL PROPERTY TAXES  
 of any former owner and ALSO INCLUDING ANY SPECIAL DISTRICT LEVIES, PAYMENT OF WHICH ARE INCLUDED THEREIN AND  
 EXTENDED THEREWITH:

and assessments levied or assessed subsequent to date of these instructions:

tions, restrictions, reservations, covenants, easements, rights and rights of way, of record, if any:

and Chattel Mortgage  
 Deed securing an indebtedness of \$ 265,000.00, as per its terms, now of record the terms of which indebtedness and said trust  
 I am familiar, and hereby approve, no further approval necessary (see page two for amount of unpaid balance of principal), affecting  
Cal 3 and any Trust Deed which I have executed individually in favor of California Bank  
covering any and/or all of the above described  
property.

to hold for me Bill of Sale executed by F. I. Richman and Lyda Tidwell, formerly known as  
a Magel, Trustees under Declaration of Trust known as "Richman Trust, dated November 1, 1945  
Lyda Richman Tidwell, a married woman as her sole and separate property and covering all  
fixture and furnishings of the apartment buildings located on the above described properties.  
signature thereon as one of the trustees constitutes my approval as Vendee of said Bill of  
Sale.

to hold for me an instrument or instruments of transfer to me covering all other and remain-  
ing assets of said Trust, the same to be approved by my attorney, Laurence B. Martin.  
will also hand to you for delivery to F. I. Richman at close of escrow a full and complete and  
final release in favor of F. I. Richman and all other parties named as Defendants in the above  
captioned United States District Court Action when you can hold for me a full and complete release  
my favor executed by said Defendants. The form of these mutual releases is to be approved  
by my attorney Laurence B. Martin and by Joseph T. Enright, attorney for F. I. Richman.  
withstanding the printed provision in these instructions I agree to pay, in addition to the  
seller's costs and expenses in this escrow all of the seller's costs and expenses of this escrow:  
the cost of the policy of title insurance, revenue stamps and recording and filing all  
instruments and documents and the seller's escrow fee.

These instructions are not intended to and do not amend, alter, modify or supersede any  
agreement outside of escrow between F. I. Richman and me and with which agreement California  
is not to be concerned.

will hand you a Quitclaim Deed from my husband Albert Ray Tidwell covering the above described  
property creating sole and separate property in me.

POLICY OF TITLE INSURANCE CALLED FOR UNDER THESE INSTRUCTIONS MAY BE ISSUED FOR THE BENEFIT OF ALL PARTIES IN  
INTEREST AND MAY BE PROCURED FROM ANY TITLE COMPANY OPERATING IN THE COUNTY WHERE THE PROPERTY IS LOCATED AND  
IT BE SUBJECT TO EXCEPTIONS AND CONDITIONS CONTAINED IN SUCH COMPANY'S REGULAR PRINTED FORM, INCLUDING BUT NOT  
LIMITED TO AN EXCEPTION THAT SAID POLICY WILL NOT INSURE AGAINST LOSS BY REASON OF THE RESERVATION OR EXCEPTION OF  
WATER RIGHTS, CLAIMS, OR TITLE TO WATER.





(Page Two)

## THE FOLLOWING ADJUSTMENTS ONLY ARE REQUIRED IN THIS ESCROW:

any above mentioned Trust Deed is secured by a statement by the owner of the note secured thereby or the holder for collection showing balance of principal thereon to be \$amount indicated by statement and adjust interest thereon on basis of such statements to None  
 SAID BALANCE OF PRINCIPAL THEREON SHOULD SHOW TO BE MORE OR LESS THAN SET OUT ABOVE ADJUST THE DIFFERENCE  
 COORDINGLY IN CASH THROUGH THIS ESCROW.

charge by buyer and credit the seller the amount of any funds shown on beneficiary's statement as impounded for future payment of fire insurance premiums, taxes and mortgage insurance premiums, and prorate mortgage insurance premiums paid F.I.A. during the past 12 months, based on said element to None

Just interest on new encumbrances by endorsements on notes to None

Prorate taxes, including all items appearing on tax bill except taxes on personal property not conveyed through this escrow, to None

based on None tax statement in your possession.

Prorate rentals on basis of statement approved by me, to None but make no adjustment on uncollected rentals

except for me such insurance policies as are submitted on buildings situated either on property above described or on premises known as none (transferred free)

you may assume that premiums on said policies have been paid and that the policies have not been hypothecated.

Make all adjustments and/or proratings on the basis of a 30 day month. "Close of Escrow" is the day instruments are recorded or registered

I agree to pay on demand all prorate adjustments chargeable to me; charges for recording deed; for notary fees on documents executed by me; or mortgage charge on insurance; for drawing mortgage and/or trust deed; cost of drawing and recording any other documents necessary on my part to complete this escrow; Title Company's charge, if any, for showing title vested in me, and Buyer's escrow fee as charged.

Seller agrees to pay, outside of escrow, and before delinquency, all taxes on personal and/or real property not conveyed through this escrow. I shall appear a lien on above described property, and you are not to be concerned therewith.

The seller guarantees that the premium on any insurance policy which he hands you or causes to be handed you in this escrow has been paid in full and that said policy has not been hypothecated.

Deliver assurance of title and insurance policies, if any, to holder of first encumbrance, or order, if any. Make disbursements by your check, documents and checks in my favor to be mailed to my address shown below unless you are otherwise instructed.

If the conditions of this escrow have not been complied with at the time herein provided, you are nevertheless to complete the same as soon as the conditions (except as to time) have been complied with, unless I shall have made written demand upon you for the return of money and/or instruments deposited by me.

NO NOTICE, DEMAND OR CHANGE OF INSTRUCTIONS SHALL BE OF ANY EFFECT IN THIS ESCROW UNLESS GIVEN IN WRITING TO ALL PARTIES AFFECTED THEREBY. In the event conflicting demands are made or notices served upon you with respect to this escrow, the parties hereto expressly agree that you shall have the absolute right at your election to do either or both of the following: withhold and stop all further proceedings in, and performance of, this escrow, or file a suit in interpleader and obtain an order from the court requiring the parties to interplead in such court their several claims and rights amongst themselves. In the event such interpleader suit is brought, you shall ipso facto be fully released and discharged from all obligations to further perform any and all duties or obligations imposed upon you in this escrow, and the parties jointly and severally agree to pay you all costs, expenses, and reasonable attorney's fees expended or incurred by you, the amount thereof to be fixed and a judgment thereon to be rendered by the court in such suit.

You are not to be held liable for the sufficiency or correctness as to form, manner of execution, or validity of any instrument deposited in this escrow, nor as to identity, authority, or rights of any person executing the same, nor for failure to comply with any of the provisions of any agreement, contract, or other instrument filed herein or referred to herein, and your duties hereunder shall be limited to the safekeeping of such money, instruments, and other documents received by you as escrow holder, and for the disposition of same in accordance with the written instructions accepted by you in this escrow.

All parties hereto further agree, jointly and severally, to pay on demand, as well as to indemnify and hold you harmless from and against all suits, damages, judgments, attorney's fees, expenses, obligations and liabilities of any kind or nature which, in good faith, you may incur or sustain in connection with or arising out of this escrow, and you are hereby given a lien upon all the rights, titles and interest of each of the undersigned in all money, documents and other property and monies deposited in this escrow, to protect your rights and to indemnify and reimburse you under this agreement.

It is agreed by the parties hereto that so far as your rights and liabilities are concerned, this transaction is an escrow and not any other relation and you are an escrow holder only on the terms expressed herein, and you shall have no responsibility of notifying me or any of the parties of this escrow of any sale, lease, loan, exchange, or other transaction involving any property herein described or of any profit realized by any person, in or corporation (broker, agent, and parties to this and/or any other escrow included) in connection therewith, regardless of the fact that such transaction(s) may be handled by you in this escrow or in another escrow.

These Instructions may be executed in counterparts, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original, and said counterparts together shall constitute one and the same instrument.

Any amended, supplemental, or additional instructions given shall be subject to the foregoing conditions.

THE FOREGOING TERMS, CONDITIONS, PROVISIONS AND INSTRUCTIONS HAVE BEEN READ AND ARE UNDERSTOOD AND AGREED TO BY EACH OF THE UNDERSIGNED.

Lyda Richman Tidwell o/o Laurence B. Martin  
 Address: Martin, Mahn & Camusi Phone: VA 1444  
 530 W. 6th St. Suite 701, IA 14  
 Zone

SELLER

February 26, 1954 19

THE FOREGOING TERMS, CONDITIONS AND/OR INSTRUCTIONS ARE HEREBY CONCURRED IN, APPROVED AND ACCEPTED.

Prior to the expiration of the time specified on Page One of the Buyer's instructions I will hand you all instruments and money necessary of

to enable you to comply therewith, including a deed of the property described, executed by F. I. RICHMAN and LYDA TIDWELL,

formerly known as Lyda Nagel, Trustees under Declaration of Trust known as "Richman Trust," dated November 1, 1945

which you are authorized to use and/or deliver when you hold in this escrow for the account of F. I. Richman

sum of \$500.00.00, net, and instruments deliverable to me under these instructions.

My commission of \$ None to

broker's License No. , whose address is

Notwithstanding any of the printed provisions herein I, the undersigned, F. I. Richman  
 do hereby agree to be bound to the above and to the fact that the same shall not be at any expense under this escrow.

I understand that the Dismissal with Prejudice and the Satisfaction of Judgement will be required to be filed in the United States District Court action referred to in the Buyer's instructions and the filing thereof shall constitute the delivery thereof to me.

I agree to close of escrow deliver to me the General Release signed by Lyda Tidwell in my favor in favor of all defendants in said United States District Court Action.

You will, as my agent, assign any insurance of mine handed you for use in this escrow

U.S. District Court, the proper amount to be affixed to said deed

Issue your check for \$500.00.00 in favor of F. I. Richman

I mail to: F. I. Richman Address appearing below





(b) Install electric locks to each hopper on every floor.

(c) Complete gas line to each dehydrating burner in existing incinerator, as well as gas line to new unit.

(d) File applications covering Los Angeles County Air Pollution Control District permits.

(e) Equipment will be guaranteed as follows:

1. For a period of two (2) years from date of approval, against faulty material or workmanship.

2. To give complete operating satisfaction.

3. To conform to Los Angeles County Air Pollution Control District requirements for the next five (5) years—when operated according to our written instructions.

All materials used in construction described above will be new and of first quality. All labor will be performed by men experienced in incinerator construction.

Price quoted does not include labor and materials in the nature of maintenance or repairs to existing incinerator and stack.

A deposit of 10% of the above quoted amount is required upon execution of contract, balance of which is payable upon receipt of the Los Angeles County Air Pollution Control District permit to operate.

Our work is approved by the F.H.A., and very liberal loans are available for this work.



Thanking you for the opportunity to submit this quotation, we are

Very truly yours,

Air Pollution Control, Inc.

HBP/db

Hal B. Phillips

I hereby accept the offer of the Air Pollution Control, Inc. as outlined on pages one and two of this quotation and agree to pay the sum of \$1,-450.00 and upon execution of this contract we are submitting a deposit of \$150.00.

Date: 10-23-53.

/s/ Richman Trust

/s/ By F. I. Richman, Owner Agent

Accepted by: Date 10-26-53.

Air Pollution Control, Inc.

/s/ By B. Manalis, V.P.

[Duplicate copy attached.]

---

Mr. Enright: The next, either by stipulation or by reference to the present court record, is the Oliver Cromwell Smog Control permit, pertaining to the Oxyaire Company. The permit was issued on March 9, 1954.

Mr. Powsner: Is that permit in the record?

Mr. Enright: The physical document is not, but it should be a part of your files. [588]

Mr. Powsner: Of the court files?

Mr. Enright: No, of yours. I mean your client's

files, the plaintiff's files. It was received through the mail.

Mr. Powsner: I will stipulate that that permit go in evidence. I don't know what it says.

Mr. Enright: Will you locate it?

Mr. Powsner: Yes.

Mr. Enright: And the permit——

Mr. Powsner: Dated March 9th?

Mr. Enright: Yes. Likewise, there was a permit for the Canterbury, which I think is involved in your amounts here, and it was issued March 23rd. Will you locate that?

Mr. Powsner: Yes.

Mr. Enright: And the same stipulation as to its going into evidence?

Mr. Powsner: Yes. We will stipulate those are the dates. You have a right to put the document in evidence, if you wish.

Mr. Enright: Stipulate they go into evidence.

Mr. Powsner: I haven't seen them. I don't know what the dates on them are.

Mr. Enright: That is all right.

(The documents referred to were marked Defendants' Exhibit G and were received in evidence.)

AIR POLLUTION CONTROL DISTRICT  
COUNTY OF LOS ANGELES

# PERMIT

IS HEREBY GRANTED TO

OLIVER CROMWELL APARTMENT HOTEL - RICHMAN TRUST, DBA

TO OPERATE

CHUTE-FED INCINERATOR, MODIFIED WITH A OXYAIRE U-UNIT WITH AFTERBURNER

LOCATED AT

418 South Normandie Avenue  
Los Angeles 5, California

SUBJECT TO THE FOLLOWING CONDITIONS

N O N E

THIS PERMIT DOES NOT AUTHORIZE THE EMISSION OF AIR CONTAMINANTS IN EXCESS OF THOSE ALLOWED BY DIVISION 20, CHAPTER 2, ARTICLE 3, OF THE HEALTH AND SAFETY CODE OF THE STATE OF CALIFORNIA OR THE RULES AND REGULATIONS OF THE AIR POLLUTION CONTROL DISTRICT.

THIS PERMIT CANNOT BE CONSIDERED AS PERMISSION TO VIOLATE EXISTING LAWS, ORDINANCES, REGULATIONS OR STATUTES OF OTHER GOVERNMENTAL AGENCIES.

DATE March 9, 1954  
Appl. No. 8219

**REVOCABLE AND NOT TRANSFERABLE**

GORDON P. LARSON, DIRECTOR

Nº 10424

POST NEAR OPERATING EQUIPMENT

By [Signature]  
Business Manager

76P238 10-53

AIR POLLUTION CONTROL DISTRICT  
COUNTY OF LOS ANGELES

# PERMIT

IS HEREBY GRANTED TO

CANTERBURY APARTMENTS

(JAMES M. UDALL, INCORPORATED, DBA)

TO OPERATE

FIVE FED INCINERATOR WITH TWO METTLER #4 RS GAS BURNERS  
AND AN OXYAIRE U-UNIT WITH A METTLER #9 RS GAS BURNER

LOCATED AT

1746 North Cherokee Avenue  
Los Angeles 28, California

SUBJECT TO THE FOLLOWING CONDITIONS

N O N E

THIS PERMIT DOES NOT AUTHORIZE THE EMISSION OF AIR CONTAMINANTS IN EXCESS OF THOSE ALLOWED BY DIVISION 20, CHAPTER 2, ARTICLE 3, OF THE HEALTH AND SAFETY CODE OF THE STATE OF CALIFORNIA OR THE RULES AND REGULATIONS OF THE AIR POLLUTION CONTROL DISTRICT.

THIS PERMIT CANNOT BE CONSIDERED AS PERMISSION TO VIOLATE EXISTING LAWS, ORDINANCES, REGULATIONS OR STATUTES OF OTHER GOVERNMENTAL AGENCIES.

DATE June 2, 1954  
Appl. No. 9430

**REVOCABLE AND NOT TRANSFERABLE**

GORDON P. LARSON, DIRECTOR

Nº 1343

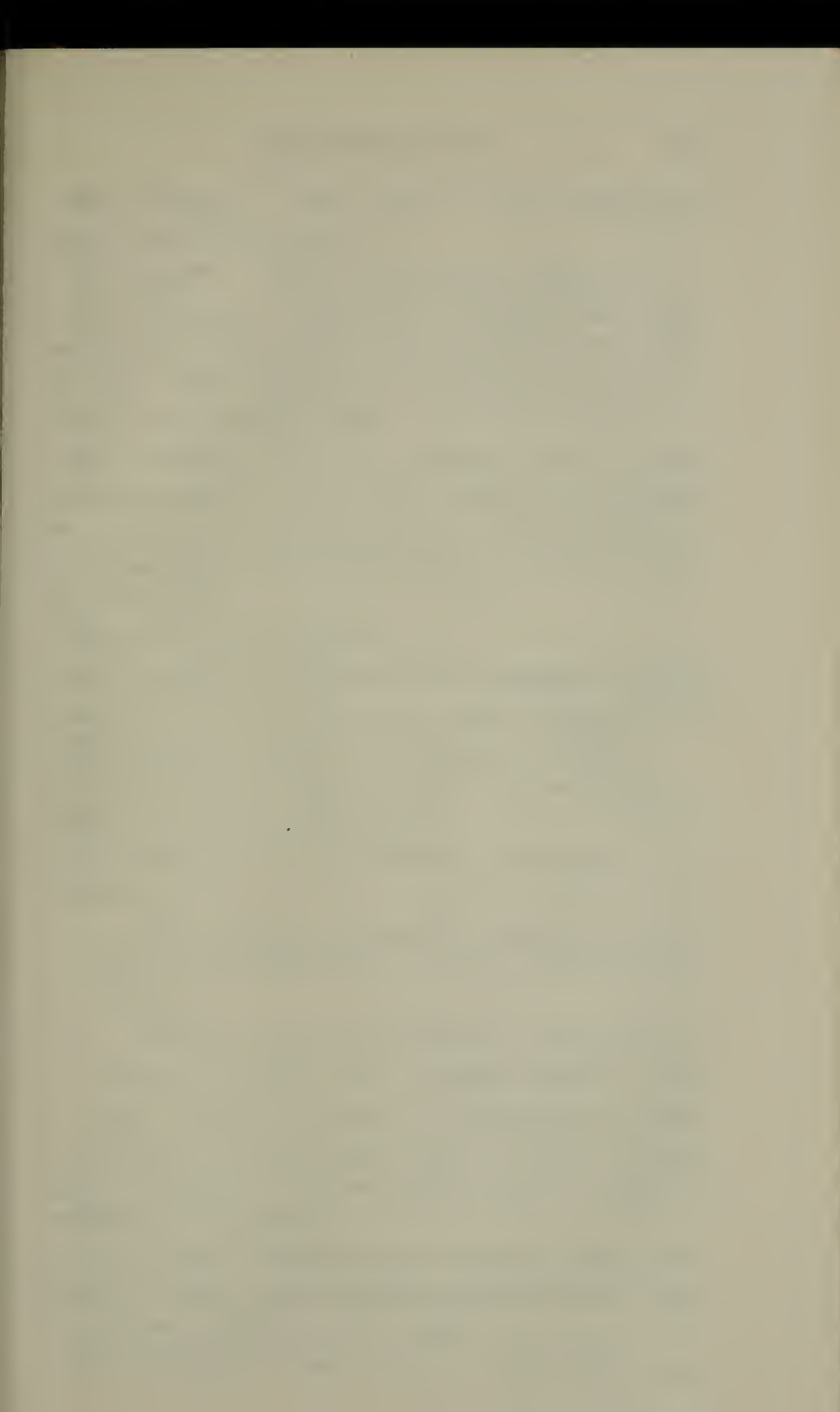
POST NEAR OPERATING EQUIPMENT

By [Signature]  
Business Manager

76P2. 7-53

DEFENDANT'S EXHIBIT G









Mr. Enright: That would be the defendants' case, your [589] Honor.

The Court: What do you wish to put in?

Mr. Powsner: I think Mr. Enright has pretty well covered the exhibits. The letters of February 19th and 26th, constituting a contract, are part of this record, are they not?

Mr. Enright: I would propose they be more definitely made a part of the record, as an exhibit by reference, to the objections by the defendant to the Receiver's accounting. That is where they are in the record.

The Court: So ordered.

Mr. Enright: That would be Exhibit H. That would be the two letters, one dated February 19, 1954, and the other dated February 25, 1954.

Mr. Powsner: Those are the letters made exhibits in your first objections?

Mr. Enright: My objections, defendants' objections.

(The documents referred to were marked Defendants' Exhibit H and were received in evidence.)

[Printer's Note: Defendants' Exhibit H, two letters, one dated Feb. 19, 1954, and the other Feb. 25, 1954, attached to Defendants' Objections, set out at pages 139-144 of this record.]

Mr. Powsner: I have nothing more to offer in evidence at this time.

The Court: Then that concludes our regular pre-trial for today, and we will anticipate either memoranda or argument on July 6th.

Mr. Powsner: Your Honor, I think there may

be some more stipulations which could possibly be reached here and now. [590]

The Court: All right.

Mr. Powsner: The amounts in connection with Mr. Richman's claims. We could stipulate that petty cash fund was \$785.00.

Mr. Enright: I had assumed that had been stipulated to.

The Court: The parties both have treated it as that amount.

Mr. Powsner: I don't know the state of your knowledge concerning the rents which you claim were collected by Mr. Hallberg, which were February rents and which were turned over to Mrs. Tidwell's agents.

I have information from Mr. Udall setting out the precise amounts which are February rents, on which Mr. Richman should have correct information, and that those amounts, or, the total is not \$1,290.59, but \$1,300.28, and that is divided up as follows:—

Mr. Enright: We will not accept the greater amount.

Mr. Powsner: That greater amount, I am starting to point out to you of what it is made up.

Mr. Enright: I would stand on the \$1,290.59. I know how you got your \$1,300.28. It is a prorate basis, and we do not agree to a proration. It is all stated in Mr. Camusi's letter of March 30th.

Mr. Powsner: In connection with the Canterbury and Western Arms and Cromwell, those three.

Mr. Enright: Yes.

Mr. Powsner: In other words, we are at issue on those amounts?

Mr. Enright: I will agree you could offer evidence it was \$1,300.28, if you so desire. We say the amount is \$1,290.59.

Mr. Powsner: There is some confusion as to what we are talking about here. When I mentioned \$1,300.28 I referred to a total which, it is our position, you have mistakenly assumed is entirely February rents. It is our position that only \$424.34 of that amount is February rents.

Mr. Enright: I cannot so stipulate.

Mr. Powsner: Then we could stipulate that the agent's fees for November, of \$3,104.13, have not been paid?

Mr. Enright: I will accept that stipulation.

Mr. Powsner: That is all I can propose, your Honor.

The Court: Well, it seems that you still have some fact issues, as to which evidence will be necessary, unless you get together on stipulations which don't look too hopeful. Perhaps by July 6th you will have worked out your stipulation. If you have not worked out further stipulation the court will give you a date for taking the evidence.

Mr. Enright: Your Honor, before we do become involved in what could be a trial lasting, I would say, maybe two days, there is a point of law that the court could rule upon, which [592] would eliminate the necessity of receiving evidence on proration of rents, or one point we have a question of fact on.

The \$58.80 item on the smog equipment I would forfeit rather than go to trial on, leaving only this question of rents.

Now, the point of law I make is this: There has been received in evidence by stipulation already two escrow instructions. They have been received in evidence, the February 19th offer from the defendant to the plaintiff, and February 25, 1954 acceptance by the plaintiff of the defendant's offer.

The Court: And the release.

Mr. Enright: And the release. Now, my point is this: That the escrow instructions specifically provide there be no proration of rents if the court were to rule upon that written instrument, three documents constituting the instrument, or, if they want, the two letters, the offer and acceptance. The parol evidence is not admissible, I don't think. I am satisfied it isn't.

At least in my own mind there is no issue of fact remaining, because the escrow instructions are clear that there be no proration of rents.

I have it here, if you care to read it. And I had in mind the specific provision on page 2 of the instructions, "The Following Adjustments Only Are Required In This Escrow:" [593]

When it comes to rents there is "None."

The typewritten portion of the escrow specifically provides, on the first page:

"Notwithstanding the printed provision in these instructions I agree to pay, in addition to the buyer's costs and expenses in this escrow all of the seller's costs and expenses of this escrow and the



cost of the policy of title insurance, revenue stamps and recording and filing all instruments and documents and the seller's escrow fee.

"These instructions are not intended to and do not amend, alter, modify or supersede any agreement outside of escrow between F. I. Richman and me and with which agreement the California Bank is not to be concerned."

My point is this, your Honor: The February 19, 1954 letter, offer, provided for an escrow, contemplated an escrow.

The February 25, 1954 acceptance accepted the offer as it was written. Somehow we might logically argue there is uncertainty as to the meaning of the offer and acceptance.

But if there is uncertainty, that uncertainty was completely cured and perfected by the written escrow instructions that I have just read, or the whole of the written instructions, if one wants to add all of them. [594]

Now then, if the plaintiff here expressly in writing agreed that there be no proration of rents, and rents were to remain in the hands of the Receiver up to 5:00 p.m. February 28th, and the plaintiff was to receive the rents commencing March 1st, the escrow instructions specifically provide for no proration of any kind. The escrow instructions specifically provide——

Mr. Powsner: I don't think the escrow instructions say that.

Mr. Enright: The escrow instructions specifically

provide, "The Following Adjustments Only Are Required In This Escrow:"

It then goes on and enumerates taxes and various other items, and after each and every one the word is printed in as follows: "None," N-o-n-e.

My point is this: That it is a question of law for the court to determine from the instruments themselves as to whether there is any proration of rents.

If the court determines in the defendant's favor, then there is no occasion to stipulate. I am merely stating here, to avoid the necessity of going to trial on fact which I will object to, or evidence pertaining to fact, which I will object to, as being an attempt to vary the terms of the written agreement.

The Court: The court sustains your objection. I think [595] parol evidence takes care of it, the parol evidence rule, I mean.

Mr. Enright: Yes.

Mr. Powsner: May I say, in connection with Mr. Enright's objection to the introduction of evidence, I think there is no question of parol evidence being introduced to modify the original escrow instructions. The escrow instructions specifically say, "These instructions are not intended to and do not amend, alter, modify or supersede any agreement outside of escrow between F. I. Richman and me," Mrs. Tidwell.

Obviously, that provision does refer to agreements, the outgrowth of escrow, and would refer to them and bring them most definitely into the interpretation of this agreement.

I think the authorities in Mr. Camusi's latest

brief most accurately show that escrow instructions are, in their interpretation, subordinated to a written contract by which they are arrived at.

The Court: Are you contending there was a written contract which provided for proration?

Mr. Powsner: That is correct.

The Court: I will set aside the ruling and examine the evidence and see if it includes such a contract.

Mr. Enright: Yes. In other words, the court will examine the two letters and then examine the escrow instructions and then rule—— [596]

The Court: Yes.

Mr. Powsner: Subject, your Honor, of course, to the arguments as to the meaning of that contract?

The Court: Yes. That will be one of the subjects that is to be argued here on the 6th.

Mr. Powsner: Yes. As I understand, your Honor is not going to make the requested ruling at this point now, but just to answer Mr. Enright, the point is that the instructions do refer to the prior contract and says it is not intended to supersede them, and the authorities submitted point out, not only does not the escrow instructions supersede the contract, but it is definitely subordinate in its meaning and interpretation to the former contract.

The Court: Yes.

Mr. Powsner: Which former contract, at least the affected provisions of it, having been written by Mr. Richman or his attorney, are to be construed, if there is any ambiguity in there, are to

be construed most strongly against Mr. Richman.

I want to answer Mr. Enright, to point out that the authorities show—and I don't think Mr. Enright has submitted any authorities to counter against this—it is our contention the authorities do show that the contract contained in the letters of February 19th and February 25th prevail over contradictory provisions in these escrow instructions.

And in construing that contract, to see if it does have [597] provisions to prevail over the provisions of the escrow instructions, that that contract must be construed most strongly against Mr. Richman.

Mr. Enright: Are you through?

Mr. Powsner: Yes.

Mr. Enright: My point was that I invited a ruling by the court interpreting and construing the two letters and the escrow instructions, or without the escrow instructions, and if the ruling were favorable to the defendant there would be no occasion for our issue of fact.

I am willing to stand on the very authority they particularly—and I quote from their own memorandum:

“In *Pigg vs. Kelley*, 92 Cal. App. 329, it was held that where a written agreement of sale and escrow instructions connected therewith show by their terms that they refer to the same sale, the two instruments must be construed together under Civil Code 1642 to ascertain the whole contract between the parties.”

And they also cite *Womble vs. Wilbur*, 3 Cal. App. 527.



I am attempting to avoid an issue of fact. I will endeavor to stipulate and will meet at counsel's convenience any time between now and July 1st.

Mr. Powsner: Yes, we have stipulated to that.

Mr. Enright: Any other evidence? [598]

Mr. Powsner: No other evidence that I have. Am I to understand you are abandoning your request for a ruling at the present time?

Mr. Enright: No. I am still requesting it. I understand the court——

The Court: I understand he is still requesting it. I don't want to rule precipitously, until I have an opportunity to reflect on it.

Mr. Powsner: May I request then it be made along with the other issues in the case, after briefs or memorandum are submitted by us, or oral argument or introduction of evidence, depending on what agreement we reach?

The Court: It would have to be made before the case is closed. It might be a ruling which would allow the introduction of evidence. It might be a ruling which would foreclose some evidence you would wish to offer. I will have to make it before the case is concluded.

Mr. Powsner: Your Honor is now referring to a ruling as to the legal effect of the escrow instructions and the written contract?

The Court: That is right.

Mr. Powsner: It is my understanding that we have stipulated to everything except minor amounts of money in connection therewith.



The Court: But you haven't stipulated as to the legal [599] effect of the instruments themselves.

Mr. Powsner: That is right. I would want to include those issues in any further arguments, memoranda or brief to be made.

The Court: You may do so. And that is what we will rule on before the case is closed. I will hear you on July 6th at 9:00 o'clock or receive your briefs on those points, and we will have given this matter some study, so that I can possibly let you know immediately.

Mr. Enright: May I comment that if the court does find a few moments' time—and I know time is pressing—then we might avoid our question of fact as to this \$4,499.29 February rents they claim they collected.

The Court: Yes.

Mr. Powsner: I don't mean to be insistent. I don't want to misunderstand. In other words, your Honor is not going to make that legal ruling before giving us a chance for further argument on that legal point?

The Court: Not at all. Not at all. It is going to be argued before it is decided.

Mr. Powsner: One other confusion I have. Assuming we cannot get together and completely dispose of the case by stipulation, plus written memorandum, and assuming that I understand that the situation that will take place July 6th will simply be the assigning of a further date for hearing, [600] of some date in the future after July 6th for hearing——

The Court: On July 6th we will hear argument on this particular question.

Mr. Powsner: I see.

Mr. Enright: I don't know what you want to do about this envelope. I believe if they could be kept back, I am quite sure I can demonstrate to you——

The Court: You think it is a matter that can be disposed of by stipulation?

Mr. Powsner: I think we ought to have these while we discuss the matter.

The Court: Yes.

Mr. Enright: This transcript will be written up and we will have the benefit of it for further hearing.

The Court: That is my understanding.

Mr. Powsner: Yes, I am requesting that it be written up at the present time.

Mr. Enright: I can't propose anything else, your Honor, to close this matter.

The Court: Well, I wish you luck in your discussions.

Mr. Enright: Thank you.

Mr. Powsner: Thank you.

(Whereupon, at 2:55 o'clock p.m., Monday, June 21, 1954, the hearing in the above-entitled matter was adjourned.) \* \* \* \* \* [601]

Los Angeles, Monday, Sept. 27, 1954, 9:00 a.m.

The Court: It has been a long time since we were all here in this case, but, as I recall it, this is the day for the final, final argument on the sub-

ject of settlement of the trustee's account or, rather, the Receiver's account. Is that right?

Mr. Camusi: Yes, that is right.

Mr. Enright: As I understand the matter, your Honor.

The Court: Who wants to make the first argument or be first in the making of the final argument?

Mr. Enright: I will be glad to be heard, your Honor.

The Court: All right.

Mr. Whyte: Might I request the court's indulgence before we begin?

I believe this session today has to do with the adjustment of the accounts between Mrs. Tidwell and Mr. Richman. The argument with respect to the Receiver's report and the fees have already been argued.

Might I inquire of the court what I should do about these bills again?

There is a bill in the sum of \$89.20 to the reporter on account of copies of the Receiver's deposition and of my deposition taken by Mr. Richman.

There is also a bill in the sum of \$100.00 as the fee [603] for the expert witness, who testified as to the reasonable value of Mr. Hallberg's services.

Would the court care to instruct as to what disposition should be made of those bills?

The Court: Yes. The court should instruct you, but not from the bench.

Mr. Whyte: Would you prefer that I file a written petition for instructions?

The Court: You might just file the bills with the Clerk here, and he can give them exhibit numbers.

Mr. Whyte: Would either counsel like to see these?

Mr. Enright: Yes. Not at this time.

The Court: My offhand feeling is that the receiver has finished paying bills, as such, and that these are more in the nature of costs, but I want the answer, and I won't know until the books are made available.

Mr. Whyte: Very well, your Honor.

The Court: I am somewhat surprised to see you here, since the argument has been made upon your fees and those of your client, and I don't think it is necessary for you to remain. I assume you are going to ask permission——

Mr. Whyte: Yes, I was going to ask if I might be excused, unless the court would request me to remain.

The Court: You are very welcome, but since all matters concerning your petition and those of your client have been [604] argued, insofar as they refer to those parties, your further attendance is not required.

Mr. Whyte: That is just fine, your Honor. Thank you.

(Whereupon Mr. Whyte retired from the courtroom.)

Mr. Enright: May it please the court: On the June 21st hearing in this matter, stipulations were entered into, and Exhibits A to H, inclusive, were received in evidence, and after they were received



in evidence, on behalf of the defendant, Mr. Richman, I objected to the introduction of certain evidence on the part of the plaintiff pertaining to the proration and pertaining, for example, to the escrow expenses or the Revenue stamps.

My objection was stated in the transcript, as shown for that day, and on page 25, after the court had sustained my objection, the plaintiff's counsel argued that they had further argument or evidence to support their position that there be a proration, and at line 18 the court stated:

"The Court: Are you contending there was a written contract which provided for proration?"

"Mr. Powsner: That is correct."

Now, with those simple preliminaries I am sure we are back to the basic proposition as to whether or not the February 19th offer of settlement and the February 25th acceptance, being Exhibit H before your Honor, constituted a contract. [605]

I am sure there was no dispute in anyone's mind that that did constitute a settlement agreement.

Now, the next question is whether or not that contract, composed of the two letters, provided for proration of taxes, rents, payment of escrow expenses, the revenue stamps to be put on the seller's, Mr. Richman's deed, and it is our position and stand that the statement is clear and does not provide for those payments.

Now, assuming that the agreement is ambiguous, two days later the parties met at Escrow Services of the California Bank, and they entered into a written escrow agreement. The terms and provi-



sions of that agreement eliminate any possibility of dispute.

Now, we both submitted our memorandum or our arguments, and the plaintiff herself cited two or three cases which showed definitely that the written agreement and the escrow instructions were to be read together. The escrow instructions clarify it, if there was any uncertainty in the written agreement.

Now, since then, and over this week end, I ran across a very recent District Court of Appeals decision, a California District Court of Appeals decision. It is *Leiter vs. Handelsman*, decided May 7, 1954, reported at 270 Pac. 2d. 563. It involved a written agreement for the sale of a lot on which the parties contemplated constructing a supermarket, or [606] a market of substantial value, I think of some \$30,000 and it also involved escrow instructions. Now, on appeal this is what the Appellate Court said, quoting on page 567:

"There are two instruments involved here, the agreement of purchase, and the escrow instructions. Where the terms of an executory agreement for the sale of real property are clarified by the provisions of signed escrow instructions, those instruments are to be considered together in determining the understanding of the parties and in ascertaining their rights and obligations."

*Katemis vs. Westerlind*, a citation, and *Keelan vs. Belmont Co.*, another citation.

Continuing the quote:

"Escrow instructions are customary and expected

directions to carry into effect an executory agreement. *King vs. Stanley*, *supra*.

“The agreement of purchase provided that ‘Time is of the essence of this contract, but the time for any act required to be done may be extended not longer than thirty days by the undersigned agent’. The escrow instructions contained the following: ‘In the event that the conditions of this escrow have not been complied with at the expiration of the time provided for herein, [607] you are instructed to complete the same at the earliest date possible thereafter, unless we or either of us shall have made written demand upon you for the return of the money or instruments deposited by either of us; in which case you are instructed to return all instruments and/or cash to the respective parties hereto. \* \* \*’”

I ask that we not confuse the facts that are in issue, that time is the essence, as the issue here is the payment of the proration of taxes, proration of rents, payment of escrow expenses, because the same principle of law applies to both sets of fact.

Again, I point out that the court said the rule of law is that you read the agreement and the escrow instructions together if the agreement needs clarification, and this is what the Appellate Court has said at page 567, in determining this point:

“Assuming, nevertheless, but not necessarily deciding, that Katemis is controlling and that time was not of the essence here, we come next to the escrow instructions.”

That is our exact position here in this case. Assuming that the written agreement was not clear in providing that there were to be no proration of these items, we next come to the escrow instructions, just as this trial court did, [608] and this Appellate Court did.

Then the Appellate Court said, in deciding that proposition, and I quote again from page 567, and after referring to the facts here, I quote:

“The right to make written demand for return of the money or instruments was an integral clear and unequivocal clause in the instructions. Even if time was not of the essence, and even if it could be found that there had been a waiver of the precise time of performance, nowhere has it been suggested in the evidence or in argument that respondents waived their right to make written demand for return of their money after the 30-day escrow period concluded. Were they to be denied that right, the court in effect would be altering the express terms of the contract. Neither a trial nor appellate court has the power to rewrite a contract.”

Now, let us examine what these parties agreed to in their escrow instructions, assuming but not conceding that there is ambiguity in the February 19th and 25th original letters constituting the settlement agreement.

The escrow instructions are before the court as Exhibit F. They are the usual printed form, having provisions for insertions. I am going to read only a part of it in order [609] to conserve time, but I invite your Honor to peruse the entire docu-

ment. One part of the insert type written provision is:

“Also hold for me Bill of Sale executed by F. I. Richman and Lyda Tidwell, formerly known as Lyda Nagel, Trustees under Declaration of Trust, known as ‘Richman Trust’, dated November 1, 1945, to Lyda Richman Tidwell, a married woman, as her sole and separate property and covering all furniture and furnishings for apartment buildings located on the above-described properties. My signature thereon as one of the trustees constitutes my approval as vendee of said Bill of Sale.

“Also hold for me an instrument or instruments of transfer to me covering all other and remaining assets of said Trust, the same to be approved by my attornel, Laurence B. Martin. I will also hand to you for delivery to F. I. Richman at close of escrow a full and complete and general release in favor of F. I. Richman and all other parties named as Defendants in the above entitled United States District Court Action when you can hold for me a full and complete release in my favor executed by said [610] Defendants. The form of these mutual releases is to be approved by my attorney, Laurence B. Martin and by Joseph T. Enright, attorney for F. I. Richman. Notwithstanding the printed provision in these instructions, I agree to pay, in addition to the buyer’s costs and expenses in this escrow, all of the seller’s costs and expenses of this escrow and the cost of the policy of title insurance, revenue stamps, and recording and filing



all instruments and documents and the seller's escrow fee.

"These instructions are not intended to and do not amend, alter, modify or supersede any agreement outside of escrow between F. I. Richman and me and with which agreement California Bank is not to be concerned.

"I will hand you a Quitclaim Deed from my husband, Albert Ray Tidwell, covering the above described property creating sole and separate property in me."

Now, that is the typewritten insertion in this escrow instruction, Exhibit F, and it specifically provided, "in addition to the buyer's costs and expenses in this escrow all of the seller's costs and expenses of this escrow and the cost of the policy of title insurance, revenue stamps, [611] and recording and filing all instruments and documents and the seller's escrow fee" are to be paid by Lyda Tidwell.

Now they come in here and they ask us, or they want to charge us for the whole of the revenue stamps and the escrow fee, and I suppose half of the other items.

In other words, there is no uncertainty in these escrow instructions.

Let's continue on on the proposition of the pro-ration of taxes, where they want to charge us with some \$4,000. On the back page of the printed portion of these escrow instructions, it has some blank spaces for insertion, and the very top line reads:



“The following adjustments only are required in this escrow.”

Specifically, there are to be no adjustments, and, specifically, it provides no proration of taxes and no proration of rents.

Now, this paragraph typed into the escrow instructions above the signature of Mr. Richman is significant, and I read it in its entirety. It is added to the printed portion:

“Notwithstanding any of the printed provisions herein, I, the undersigned, F. I. Richman, am not to be at any expense under this escrow.” Now, we stand firmly upon the ruling that your Honor [612] made on June 21st, when your Honor sustained an objection to the introduction of parol evidence tending to show what the amount of dollars would be on a proration of the taxes.

If there is any uncertainty in the written contract, which is received in evidence as Exhibit H, being the two letters, it was clarified. It was not modified. It was not amended, or it was not in any manner changed by the escrow instructions.

Therefore, when Paragraph 4 of the offer of Mr. Richman, which was made on February 19th, is to be considered, especially when it is to be considered under these circumstances, as stated in the third paragraph of the letter, and I quote the third paragraph, the letter being addressed to Mr. Martin:

“In regards to your request that I spell out ‘exactly’ the precise terms and wording of the release, I do not think that is at all necessary. Any

agreement made contemplates a full release of any and all claims that either Mr. Richman or Mrs. Tidwell have or think they have against the other from the beginning of the world to the present time. If this matter is going to be terminated, it is my desire to have it terminated completely and not by use of trick terminology which might subject it to other lawsuits in the future." [613]

Now, the proposed settlement was in paragraph four, where this dispute now apparently arises, and which we say is completely clarified by the escrow instructions. It is as follows:

"A stipulation shall be entered into that the Receiver be relieved as of February 28, 1954, and whoever buys shall be entitled to all receipts and shall assume all operating obligations of the Richman Trust from March 1, 1954, on or until the re-appointment of a receiver as might occur under 7(c) hereof."

The next paragraph, and apparently they claim it is ambiguous, because otherwise I don't know why they are asking us for these large balances, reads:

"The Receiver shall file his report and after the payment and/or provision for all of the Receiver's claims and expenses and operating obligations of Richman Trust to February 28, 1954, any funds remaining shall be divided equally between Mrs. Tidwell and Mr. Richman."

Now, in their memorandum they have asserted that taxes are not an operating obligation.

I will assume that legal minds could differ as to

what does the term "operating obligations" mean. I know from my own experience in utility cases before the California [614] Public Utilities Commission operating obligations for utility purposes include taxes.

As to what it means between two businessmen or a businesslady and a businessman, the lady being represented by attorneys and advisors, and so forth, there is no certainty in the law or in the cases anywhere, that when that same party signs an escrow instruction two or three days later, which specifically provides, "The following adjustments only are required in this escrow," and when it comes down to taxes and when it comes down to rents—maybe I had better read it concerning taxes:

"Prorate taxes, including all items appearing on tax bill except taxes on personal property not conveyed through this escrow, to None."

"Prorate rentals on basis of statement approved by me, to None."

I submit, your Honor, there should be no argument on the proposition; that we have in our pre-trial memorandum, dated June 16, 1954, and if I could call that one to your Honor's attention when you have to deliberate on this matter, June 16, 1954, page 9, which is an exact accounting, and which I am sure is correct, and I think your Honor will sustain our objection to the introduction of this claim for revenue stamps, escrow instructions proration of taxes and proration of rents. [615]

That is the only means by which I say we can avoid an expensive trial.

Mr. Camusi: Aren't you going to comment, or does that mean you have conceded the point of the fees that have been claimed?

The Court: When this matter was set for argument today, everybody said it could be done in a few minutes. You have already taken about 25 minutes. I take it he is relying on his memorandum.

Mr. Enright: I am not conceding those amounts at all.

Mr. Camusi: O.K.

Mr. Enright: I don't think that I have anything further to add.

(Another case called.)

Mr. Camusi: Your Honor, in this case we start out with this offer letter of February 19, 1954, and, as Mr. Enright states, there is no question that we unqualifiedly accepted that. And Mr. Enright states that creates a contract. There is no question that we had a contract providing for the settlement, and the ultimate complete, final disposal of this case.

Now, what did they say in that contract? The very first point is that there should be mutual releases from the beginning of the world to the present time.

The second point is that both parties shall bear their [616] own expenses.

Now, we are the offerees, and we are entitled to take that at its face value, that those parties shall bear their own expenses from the beginning of this lawsuit to the very end.

So when we get into escrow, unless your Honor decides something happened at escrow to change



this situation, why should we all of a sudden bear Mr. Richman's expenses.

Now, the paragraph on mutual dismissals is the third point. We gave those.

Paragraph four is:

“A stipulation shall be entered into that the Receiver be relieved as of February 28, 1954, and whoever buys shall be entitled to all receipts and shall assume all operating obligations of the Richman Trust from March 1, 1954 \* \* \* ”

Now, we have a right to take that to mean when March 1st comes around, when we took possession under this agreement, we were entitled to all of the receipts of moneys, as we were entitled and obligated to pay all of the obligations of the trust, beginning March 1, 1954.

Now, I don't think there is any question that real property taxes in a trust which is concerned with the rental of apartment houses is anything but an operating expense or obligation, and I have cited a case on that point in my [617] memorandum.

Then in paragraph five I think it goes further, to state that:

“The Receiver shall file his report and after the payment and/or provision”—in other words, the Receiver might not have paid it, but let's make provision for those payments, if he hasn't done so. That is the way I take this to mean. —“the Receiver shall file his report and after the payment and/or provision for all of the Receiver's claims and expenses and operating obligations of Richman



Trust to February 28, 1954, any funds remaining shall be divided equally \* \* \* ”

Now, Mr. Enright states, and I think that possibly this is where the nub of the contention is concerned, he says there is nothing in this contract on proration, and, therefore, there isn't any proration, and then you get to your escrow instructions, and that nails it down, but that isn't the case.

There are authorities directly in point on that question. *King vs. Stanley*, 32 Cal. 2d—I might say I did not cite this, or, rather, I may have, but I did not do more than cite it. It is *King vs. Stanley*, 32 Cal. 2d. 584, and there it is stated:

“\* \* \* Equity does not require that all the terms [618] and conditions of the proposed agreement be set forth in the contract. Though usual and reasonable conditions of such a contract are, in the contemplation of the parties, a part of their agreement.”

Now, here is our position as to the taxes, as to their proration: I think it is set out right in paragraph four here just how it is to be handled. We are to get the receipts for the month of March.

The Court: Paragraph 4 of your settlement agreement?

Mr. Camusi: Of the offer letter. I think that sets it out, and it also sets out we are responsible for operating obligations from March 1st.

But assuming that that is vague and does not cover the point exactly, here is a very late Supreme Court case of this State saying that all of these incidental matters which come up in a con-

tract are in contemplation of the parties a part of their agreement, and then says:

“In the absence of express conditions, custom determines incidental matters relating to the opening of an escrow, furnishing deeds, title insurance policies, prorating of taxes, and the like.”

Mr. Enright: Will you give me that citation?

Mr. Camusi: That is 32 Cal. 2d 584, and citing other cases. [619]

In that case the defendant contended that the escrow instructions did not follow the alleged contract obligations but included different terms which had not been accepted by her. In other words, the original contract, your Honor, in that case could not provide, I believe, for her to pay the policy of title insurance, or some of those incidental things which arise, and the court said:

“The escrow instructions were merely customary and expected directions to the escrow company to carry into effect the executory agreement. Such instructions do not take the place of the agreement of sale, but merely carry it into effect.”

In other words, it was necessary, in order to carry this contract into an executed status, to go into escrow, both sides realized that, and as soon as we accepted this offer unconditionally, both parties were willing this matter go into escrow.

Now, that escrow was just a mechanical device whereby both parties could carry out their intention of settling this case, as expressed in the letter written by Mr. Enright, the offer letter of February 19th of this year.

Certainly, having accepted that, we are not going to go into escrow and change that contract, and give them something they had not bargained for in their offer, unless your Honor believes we did something in escrow to change [620] this original contract.

Now, in *O'Donnell vs. Lutter*—and I believe this is a new case, your Honor, *O'Donnell vs. Lutter*, 68 Cal. App. 2d 376, the court says that in these contracts of sale there is an implied provision of taxes and rent.

Now, if that case is right, and I think it is, when we look at this agreement, if it does not say so on its face, and I think it does,—but assuming this contract offer of Mr. Enright's did not say so on its face, then it is an implied condition of this contract that we will prorate taxes and rent.

So we get into escrow, and it is true the escrow makes instructions and statements attributed to it by Mr. Enright, but they all say in effect, and regardless of what is provided in print in this escrow instructions, you will do it this way in this escrow.

But how are we going to ignore the express language of the escrow instructions, which state:

"These instructions are not intended to and do not amend, alter, modify or supersede any agreement outside of escrow between F. I. Richman and me"—meaning Mrs. Tidwell—"and with which agreement California Bank is not to be concerned."

In other words, California Bank is not concerned in following out, as the escrow holder, and they are not [621] interested in following out our agreement to the letter. They are merely providing us with a

vehicle by which we can carry our agreement to completion.

So it is our contention that the meaning of our contract goes right back to the offer letter of Mr. Enright, and since we paid approximately the amount as set forth, close to \$5,000.00 in taxes for the first two months of the year, January and February, it is our contention that those expenses are operating obligations and should be shared equally by the parties. What happened was we had to pay them all, and Mrs. Tidwell paid all of those out of her own pocket.

I think that answers the argument on the taxes, and it also answers the argument on the proration. It answers the argument on the seller's escrow expenses. Why should we pay Mr. Richman's expenses when the agreement specifically states that each party is to bear his own, and, further, when it is an implied condition of the contract that the seller pays his escrow expenses.

It also answers the question of the revenue stamps.

Incidentally, there are two acts involved under the question of the stamps on a deed. The last one is the Act of February 24, 1919, 40 U.S. Stats. 1057.

The court at 15 Cal. Jur. 2d., Section 1777, and in *Cole vs. Ralph*, 252 U.S. 286, 240 Supreme Court 221, stated [622] that the earlier Act contained language making the deed void, and that a deed would be inadmissible in evidence if it did not have the stamps on it.

Now, the Act has been changed to the extent, for instance, that the State of California states the Fed-



eral Government cannot tell us what is or what is not a legal conveyance in this State, and the conveyance is legal, but there is still a fine and a criminal action, as well as civil, against the party for failure to put stamps on the deed. That is an obligation by custom, as well as by law, on the seller, and why should we pay for the revenue stamps, and why should we pay the expenses that are attributable to the seller?

One other case which states that these usual and reasonable terms are in contemplation of the parties a part of such contract is *Janssen vs. Davis*, 219 Cal. 783, at page 788.

Now, on the question of proration, I was not present, but I read the transcript of the proceedings had on this question, and Mr. Enright stated he was willing to stipulate that the Receiver had collected \$1,290.00, or, rather, that Mr. Udall, Mrs. Tidwell's representative, had turned over to him the sum of \$1,290.59, which represented rents which had been collected near the end of the month of February, and turned over to the plaintiff in this case. [623]

Now, this point was not made, your Honor, but it is our contention that of that sum, anyway, only \$432.34 was February rents, and if the court believes that a proration is the proper thing in this case, I think a sub-accounting should be had to demonstrate that point.

As to the proration of the rents, I think these managers' reports for the five apartment houses will show when the rent was due, and when it was



paid, so that in that sense it can be seen that during the month of February certain rents were collected which were properly for the month of March. And I would like to offer those into evidence, together with these utility bills.

I noticed in the transcript that Mr. Enright said we might introduce the utility bills into evidence, and I offer those exhibits at this time.

Mr. Enright: To which objection is made upon the grounds heretofore argued, and heretofore stated, and if such documents are received in evidence, of necessity there will be created an issue as follows:

Concerning the real-property taxes, which are claimed to be some \$4,000.00, if proration is to occur, of necessity there will have to be proration of the personal-property tax claims paid by Mr. Richman on personal property on a much larger sum.

Second, as to the rents received by the managers before [624] March 1st, which under the court order were to go to the Receiver, and which in fact were picked up by Mr. James Udall, there is no dispute in the evidence concerning those, in the amount of \$1,290.59, it can be prorated, and then, of necessity, you must look into the rents, the delinquent rents, that were collected in March, because if we are going to prorate, we will have to prorate both ways to be equitable and fair.

Thirdly, if we are to prorate utility bills, these bills here, this bundle of bills show errors in mathematics.

Fourthly, it shows right upon its face that they are attempting to charge Mr. Richman with long-distance phone calls, and similar charges.

Also, I submit that the tenants pay when they get their bill for their month's rent, and they would have paid in March.

And there are a lot of details of questions of fact, and if we are going to entertain some implied covenant to prorate, or some implied custom to prorate, when we have this express contract, I submit that if we try the matter we will take at least a number of days to hear it.

The Court: Sustained. Just a moment.

(Another case called.)

The Court: Proceed.

Mr. Camusi: I don't know what that ruling means. If [625] it means your Honor does not care to take evidence at this time, and you are to decide an accounting should be had, that is perfectly agreeable to us, but I hope it does not mean your Honor has ruled before I shall have made my argument as to what the law is on this issue in the case.

The Court: If on the main contention I should ultimately decide you are right, we will refer the whole question to a Master for the taking of evidence.

Mr. Camusi: I see.

The Court: But I think at this time that you are bound by the agreement.

Mr. Camusi: Oh, that is my point, your Honor.

The Court: The agreement seems to the court to be rather clear on this, and to treat on it rather

against your contention, although that is tentative.

Mr. Camusi: I would like to call the court's attention to this, that when a person makes an offer saying that the offeree must assume all operating obligations from March 1st, certainly the offer must be interpreted, if it is capable of two interpretations, must be given that favorable to the offeree, since the efferor has chosen the language.

It is difficult for me, looking at this offer, to see how we can be held solely responsible for taxes, why we should personally assume obligations which had occurred [626] prior to March 1, 1954.

That is the point I am making, and that is that these obligations had occurred prior to March 1, 1954, and they were operating expenses and obligations in prior months.

Now, with respect to the petty-cash fund, that was a trust. Again looking at the offer, we purchased in effect, all of the rights, title and interest of Mr. Richman in and to the assets of this trust. One of the assets was the petty-cash fund. That does not even fit into Paragraphs 4 and 5. It is not an obligation of the trust. It is not a receipt. It is an asset that is used for all purposes, as any petty-cash fund is. There is nothing special about the petty-cash fund. We purchased that, and now Mr. Richman wants half of that.

The question also arises as to this fee Mr. Richman has been claiming. This was a fee for November of 1953, which was the month immediately preceding that in which the Receiver took over. Now, up until the time this agreement was made, we must

realize there was a judgment of record, and unless a new trial had been granted, or the judgment had been reversed on appeal, that judgment would become final. That judgment voided the trust, canceled it, and there was a finding that the fees of the Receiver had been excessive, and then I believe the court made a finding that six per cent would have been a reasonable fee. [627]

Looking at that as the background here, we had a situation where, had that judgment remained in effect, we would have had a good claim on Mr. Richman for that additional four per cent charged Mrs. Tidwell over a period of some years, amounting to a good many thousands of dollars. Now, we released——

The Court: I am sure that you would.

Mr. Camusi: How was that?

The Court: This trust was not void, but voidable, and when she coasted along with it for years, and paid part of the burden, wouldn't she have accepted it until a certain period of time? Just to keep from having laches run against her, wouldn't she find herself with what she accepted?

Mr. Camusi: That isn't what I read in the cases. The court held if the fees were excessive at the cancellation of the trust, she would have a return of the excessive fees.

Th Court: At any rate, it wasn't a settled issue.

Mr. Camusi: At any rate, I cite that as the background to this case.

Now, why should Mr. Richman get that? Evi-



dently, he is relying on Paragraph 5, so let's devote our attention to that:

"The Receiver shall file his report and after the payment and/or provision for all of the Receiver's claims and expenses and operating obligations \* \* \*"

It does not talk about Mr. Richman, and under the first paragraph, if we have to pay this, it is a personal obligation that is owed by Mrs. Tidwell to Mr. Richman, and yet both parties have mutually released each other of any claims.

To my mind it is inconceivable, under the wording of this offer, that Mr. Richman should be paid one-half of the fee which he had been charging for all of those years, and which this court held to be an excessive fee.

Now, I would like to say this to the court on that mortgage payment. I satisfied myself that that is actually an obligation paid by the Receiver for the month of March, and in line with my argument on what is right, I am willing to stipulate here that that should have come out of their joint funds, or, rather, that should be paid by Mrs. Tidwell individually rather than coming out of the joint fund.

Apparently I am not going to get any stipulations in the other direction, however, favoring me.

There again the Receiver paid that. We are not taking technical advantage of that. If it is an obligation that becomes due March 1st, all right, we will pay it. But in like event, we expect those obligations which existed prior to March 1st to be obligations for which provision should be made. That



is the offer as made by Mr. Enright, and provision should be made for those out of this fund, so that [629] Mrs. Tidwell does not pay the 100 per cent out of her own separate funds.

Mr. Enright: May I address the court briefly, please, in closing, with the statement that whereas the \$2,000.00 should be charged to Mrs. Tidwell, that, certainly, is not going to obtain any admission from me that that \$750.00 petty-cash fund should not be charged to Mrs. Tidwell. It should be charged against her.

You remember, your Honor, we introduced in evidence as one of the exhibits to this pretrial, the stipulation of February 26, 1954, which evidences the signature of both attorneys, and the order made by your Honor on February 26, 1954, to finally wind this matter up, and it very clearly spells out the Receiver is to retain the money in the bank under his control. He had five managers out there, and that money was under his control, and when Mr. James Udall is going out and picking it up on a Sunday morning, that is not going to obtain a stipulation from me that we should split with anybody.

Now, your Honor's ruling, I think, disposes of the contentions made by the plaintiff here, that is, that they are not permitted to come in here by parol testimony and vary the terms of their written contract.

So I cannot see that I have anything else to offer to aid the court in arriving at its decision, except

again I [630] refer to page 8 of my memorandum which contains the accounting.

I might refer, briefly, to page 9, to Mr. Richman's \$3,104.00 fee, under the written contract which the court held was voidable, and that item is included in the Receiver's report, there being a claim of that charge, and our charge is against the Receiver, so we did not want to go through the circuitry of prosecuting the claim against the Receiver, and then back out against the other party.

We will submit the matter.

The Court: The court will have to go through all these memoranda. I had gone away after the last hearing and had not given *Tidwell vs. Richman* any great attention. I had expected, being the good lawyers you are, that you would cut across the legal issues and get this matter settled. But since you haven't, the matters are pretty well set out in those legal memoranda, and I will take it under submission and give you a decision rather quickly; at least, as quickly as I can.

That disposes of our 9:00 o'clock calendar.

(Another case called.)

Mr. Enright: May I address the court?

The Court: Yes.

Mr. Enright: I thought it might be a convenience to the court if I left the advance opinion in the *Leiter* case. [631]

The Court: Surely.

Mr. Camusi: May I make one statement to the court? The only memorandum we have in the file, and there was only one filed on this subject, but

it includes most of the citations, and it is the memorandum of points and authorities of plaintiff regarding pretrial hearing on distribution of funds, and was filed by plaintiff June 16, 1954.

The Court: Very well. [632]

\* \* \* \* \*

Los Angeles, Tuesday, Oct. 12, 1954, 9:30 a.m.

The Court: We are on the record, but in a sense off, in that this is not a proceeding in open court, but my law clerk reported to me one day last week that he had heard from Mr. Whyte, and Mr. Whyte is very emphatically dissatisfied with the fee which the court awarded him.

He wanted to know by what process it might be brought to my attention, and the law clerk reported to me he told him it would be brought to my attention by his coming in and telling me.

I indicated at that time a willingness to have the matter presented either formally or informally. Counsel being of the view that they wished to proceed informally, we are here informally upon informal notice, but Mr. Richman is present personally, and Mr. Enright is here and Mr. Camusi is here. Mrs. Tidwell is not here. Mr. Whyte is here.

Mr. Whyte: Mr. Hallberg is ill at home with a bad back. Otherwise, he would have been here.

The Court: Well now, what do you want to urge?

Mr. Whyte: I propose to examine the amount of the fee awarded by the court to the attorney for the Receiver by several different criteria.

Let's examine it first from the standpoint of what the labor leaders might say as a living wage.

If I might circulate [634] these breakdowns of hours devoted among the court and counsel.

Mr. Enright: May I inquire, is this some new evidence or additional evidence being presented?

Mr. Whyte: No.

The Court: No, this is just an informal conference, Mr. Enright. If it comes to a point of taking evidence, we will adjourn to the court to take it there. So if you want to offer evidence, as evidence, let us know and we will proceed that way.

As it is, I am simply holding a conference between disgruntled litigants, who are disgruntled with the court today. They used to be disgruntled only with each other.

Mr. Whyte: If the court will note from the first page of the original petition for allowance of fees, it covered services to and including March 17, 1954. It showed a total of 91 hours of attorney's time.

Quite a point was made in court by Mr. Enright of the fact that I accompanied Mr. Hallberg in the collection of rents from apartment house managers before his bond was approved.

My time slip for that day shows six hours covering, not only the collection of rents with Mr. Hallberg, but accompanying him to the Union Bank to open a new account in the name of Hallberg as Receiver. I propose that six hours be deducted [635] from the 91-hour total shown in the original petition, so there may be no question about the item whatever. I have therefore set forth in the margin the total of 85 hours in the original petition.



The supplemental petition for fees covered services to and including May 10th. It showed a total of 28.4 hours of attorney's time, of which eight hours was allocable to services performed in connection with the defense of the Receiver's attorney against Mr. Richman's objections to the allowance of their fees.

Inasmuch as the services rendered in defending the attorneys against the objections made to their fees, are not compensable, I have deducted the eight hours from the total of 28.4 hours shown in the supplemental petition and placed in the right-hand margin the figure of 20.4 hours.

I will briefly run through my time slips since the supplemental petition was filed. May 11th. My time slips show five hours devoted to the following services: Telephone call from Receiver re evidence to be presented at May 12th hearing; figuring breakdown of hours of attorneys' time for inclusion in supplemental petition for fees to Receiver's attorneys;

Studying Hallberg's deposition; conference with Jefferson Mann in preparation for his direct testimony as to reasonable value of Receiver's services;

Dictating and revising draft of hypothetical question to Mann as an expert witness as to the value of Receiver's services.

There should be deducted from that total the time of approximately .3 hours, which I devoted to calculating the breakdown of hours of attorneys' time to be included in attorneys' supplemental petition for fees.



The rest of the time was devoted exclusively to the defense of the Receiver. I therefore place the figure of 4.7 hours in the margin.

May 12th. My time slip shows 5.2 hours devoted to the following services: Conference with Hubert Laugharn re his testimony as to the reasonable value of services rendered by Receiver's attorney;

I was in court on the hearing on Mr. Richman's objections to report and petitions of Receiver and his attorneys for fees;

I spent approximately one hour with Mr. Laugharn that morning before I came to court. I am therefore deducting that hour from the total of 5.2 hours and have placed the figure of 4.2 hours in the margin as allocable to the defense of the Receiver.

My time slip for May 13, 1954, shows 3.1 hours devoted to the following services: In court re hearing on defendants' objections to report and petitions of Receiver and his [637] attorneys for fees;

Telephone call to Mann and thanking him for his appearance as an expert witness; 3.1 hours.

The Court: You think your expression of thanks is something for which you should be paid?

Mr. Whyte: I think my expression of thanks took about .1 of an hour to telephone, your Honor. If you would like to deduct .1 of an hour from that total, I will be pleased to do so.

The Court: Well, it just doesn't seem consistent for us to be rendering charges for the ordinary courtesies, and I suppose that your other services

had courtesy in them, even though courtesy is not included, or at least you are not charging for courtesy as such except in this one instance, so far as we have gone with this document. I haven't read it beyond where you have now come to.

Mr. Whyte: My time slip for May 14th shows a total of 5.8 hours devoted to the following services: I was in court on the hearing on defendants' objections to report and petitions of Receiver and his attorneys for fees;

I conferred with Mr. and Mrs. Hallberg during the recesses in the hearing; I prepared and dictated a hypothetical question to Laugharn as an expert witness regarding the value of the attorneys' services.

Approximately one hour of my time on that day was devoted [638] to preparing the hypothetical question to Mr. Laugharn, so that I have deducted that from the total of 5.8 hours and placed a total of 4.8 hours in the margin.

My May 17th time slip shows 3.5 hours devoted to the following services: Conference with Mrs. Hallberg re matters to be offered in evidence on cross examination of Mrs. Kennedy.

The court will recall that she was one of the apartment house managers who testified for Mr. Richman.

In court on hearing of report and petitions for fees of Receiver and his attorneys; 3.5 hours.

May 25th. My time slip shows .6 of an hour devoted to conference with Paul Fussell re his appear-

ing as an expert witness, as to reasonable value of my services.

Since that item is not compensable I have not placed it in the right-hand margin.

On June 7th my time slip shows 4.3 hours devoted to the following services: In court re Receiver's report and petition for fees as well as attorneys' petition for fees;

Approximately one hour of this total allocable to defense of Receiver and 3.3 hours allocable to defense of Receiver's attorneys.

The court will recall about 11:00 o'clock in the morning I stood up and announced I was ready to present the case for the attorneys for the Receiver. I took the stand and was [639] cross examined after lunch by Mr. Enright.

Mr. Laugharn, my expert witness, took the stand late in the afternoon and was cross examined by Mr. Enright.

May 13, 1954. My time slip shows 3.1 hours devoted to the following services: —I beg your pardon. I haven't turned the page.

June 8, 1954. My time slip shows 3.1 hours devoted to the following services: In court re hearing on Receiver's report and petition for fees as well as petition for fees to attorneys for Receiver. Approximately one hour allocable to defense of attorneys' fees.

In that connection, the court will recall Mr. Fussell came in the morning, took the stand for a short time and was cross examined by Mr. Enright. I have allowed an hour. I think it is perhaps a little

more time than was allotted to Mr. Fussell's testimony.

In any event, I have placed the total of 2.1 hours in the margin, which is allotted to the defense of the Receiver's fees.

June 9, 1954, my time slip shows .1 of an hour devoted to the following services: Consideration of letter from Camusi enclosing Department of Employment form of notice of delinquent return with request that Receiver prepare same; letter to Hallberg enclosing notice of return.

June 14th, my time slip shows .3 of an hour devoted to [640] the following services: Telephone call from Mrs. Hallberg re notice of delinquent return form from the California Department of Employment;

Telephone call to Laurence Martin re preparation of this return; dictated note to Camusi to be delivered to him along with the return.

June 17th my time slip shows .8 hours devoted to the following services: Study of file in preparation for final argument re objections to Receiver's report and petition for fees.

Approximately .3 of that time is probably allocable to my preparation of an argument on behalf of my own fees, so I have inserted the figure of .5 hours in the margin.

June 18, 1954. My time slip shows 1.4 hours devoted to the following services: In court re final arguments on defendants' objections to report and petition of Receiver for fees and petition of attorneys for fees.



Perhaps of that time I spent .5 of an hour in defending my motion as to being entitled to fees.

I have, therefore, totaled the hours devoted to the administration of the affairs of the receivership during the three-month period on those matters which came up regarding the receivership after its termination, together with the time spent defending the attack made on Mr. Hallberg's petition and his report. It comes to a total of 130.6 hours. [641] If that total is divided into the fee of \$1,000.00, which the court has awarded to me, it is approximately \$7.70 per hour.

I say in all sincerity if Mr. Hallberg, in my opinion, is entitled to counsel whose competence and ability are worth more than \$7.70 an hour, this is a case in which he should be well represented, and if the court feels that my time is worth only that sum, then perhaps I should be removed as his counsel.

Now, I think studies of time devoted by attorneys to their practice show that compensable time per month for attorneys who work, work hard, is approximately 125 hours a month.

All of us, the court, Mr. Enright, Mr. Richman, Mr. Camusi, have been practicing attorneys. We know that if we can perform six hours of compensable work a day, with the demand on a lawyer for a certain amount of charitable work, office administration, work for which he is not paid, that we are doing pretty well. That is around 30 hours a week of compensable time, or about 125 hours a month.



Hence, I have devoted approximately one month's time out of a year to the work performed in connection with this receivership.

The overhead in our office is approximately \$1,300.00 a month, and lest there be any charge that that is too high, [642] in our office it runs about 23 per cent of our gross. In most offices the overhead is between 25 per cent and 33 $\frac{1}{3}$  per cent.

My half of the overhead, since I have one partner—there are only two of us in the office—would be \$650.00. On the basis of the fee awarded me by the court of \$1,000.00, I would have made a net profit for a month's time of \$350.00. That is salary which is paid to a lawyer fresh out of law school who begins work at O'Melveny & Myers today.

I have been practicing in this city for 13 years, which is a little more experience than the chap who has had no experience and been employed directly out of law school at a figure of \$350.00.

Let's examine the court's fee from another criterion, namely, the criterion of the testimony presented by the expert witness. It has come to my attention that the court felt that possibly Mr. Laugharn, one of the two expert witnesses, was testifying about work in connection with receiverships in general and not with respect to the particular work performed in this receivership.

Naturally, before I brought Mr. Laugharn to court I submitted to him my files, particularly my pleading clip. He went over all the documents on that clip, including the petitions which I had filed

with the court in connection with the administration of the affairs of the receivership. [643]

He went over carefully the original petition for fees, supplemental petition for fees. He went over the report that I had prepared for the Receiver.

Naturally, he carefully examined the objections filed by Mr. Enright. And the court will recall that on his direct examination I laid that foundation. He testified that he had examined all of those documents.

My question to him as an expert witness was as follows:

“Mr. Laugharn, please assume the following facts:

“John Whyte, the attorney for the Receiver, has been engaged in the active practice of the law in Los Angeles, California, for a period of from 12 to 13 years;

“For 10 years he was associated with the office of O’Melveny & Myers, one of the leading firms of attorneys in this city;

“On or about December 1, 1953, he was employed as attorney for the Receiver herein and has continued at all times to represent the Receiver;

“The Receiver was removed from his active duties of management of the business and affairs of the former Richman Trust on February 28, 1954;

“After the Receiver’s removal on that date, Mr. Whyte prepared the Receiver’s Report and Petition [644] for Allowance of Fees, and in addition he performed certain necessary services after February 28, 1954, in connection with the administra-

tion of the business and affairs of the former Richman Trust;

“Assuming further that Mr. Whyte performed all or substantially all of the services specified in the Petition and Supplemental Petition for Allowance of Fees for Attorney to Receiver, exclusive of services necessarily rendered by him in defending the Receiver and his attorneys against objections filed by defendant Richman to the Report and Petition for Fees of the Receiver and his Attorneys, which said services were performed commencing on or about December 1, 1953, to and including May 10, 1954;

“The time devoted by Mr. Whyte to the rendition of said services, excluding services rendered in defending the Receiver and his attorneys against the objections raised by the defendant Richman to the Report and Petition for Fees of the Receiver and his attorneys, has been approximately 100 hours;

“The assets of the former Richman Trust, which has been administered by the Receiver, have [644-A] a fair market value of approximately One Million Two Hundred Thousand Dollars;

“On the basis of these facts, what is your opinion as to the reasonable value of such services?”

The court will recall that Mr. Laugharn gave the opinion that the services would be valued at a thousand dollars a month for each month of the receivership, that would be December 1953, January and February of 1954.

The court will further recall that there was no

expert testimony adduced by Mr. Richman in opposition to testimony presented by me.

And I further presented the testimony of Mr. Paul Fussell, who is the senior corporate attorney at O'Melveny & Myers, regarding the reasonable value of my services in defending the Receiver against the attack made upon his report and petition for fees.

In that connection the court will recall that we were engaged in hearings on six different court days. Approximately four of those days consisted of a morning and afternoon session, and on two of them there was either a morning or afternoon session.

I have already recited the hours spent in preparing for that hearing. There was a day and a half of depositions. Mr. Enright took the deposition of Mr. Hallberg and myself in advance of the hearing.

Mr. Fussell testified, on the basis of those facts and some others which were put to him, that the reasonable value would be between \$1,000.00 and \$1,200.00.

Again, speaking to the court and to those of us who are [645] present and members of the Bar, I think any of us, particularly these gentlemen here who are trial lawyers, appreciate the fact if they are called upon to try a case in court lasting a week, depositions in advance, preparation for that trial, that a charge of \$1,000.00 is certainly not unreasonable.

One final criterion which I might briefly allude



to, the court and I had the pleasure of working on the Inglewood Federal case which involved the appointment of a conservator for a savings and loan association in Inglewood. I was one of the counsel, one of the interested parties to the lawsuit.

The court appointed a conservator for the Association on a Friday. The conservator arrived at the Association between 7:00 and 8:00 o'clock in the evening.

He was relieved from his office at about 11:00 o'clock the following Monday morning. And during that period of time he was almost constantly at the Association, and I know that his attorneys performed valuable services on his behalf during that three-day period.

There was one court appearance necessitated on behalf of the attorneys during that period, which was in connection with the order that came from Washington appointing the conservator from the Home Loan Bank Board to surplant the conservator appointed by this court.

Thereafter the attorneys for the conservator filed a report covering his services and a petition for fees to him [646] and to themselves. In their petition they stated that they had devoted 40 hours of time to their work on behalf of the conservator.

A hearing was held in this court which took approximately one hour. The only attack made upon the report and petition for fees was an attack made by Mr. Hoffmann representing the Home Loan Bank Board, to the effect that the court had no jurisdiction to appoint the conservator, in the first



place, and therefore any award of fees to him or his attorneys would be highly improper.

The hearing, as I say, took approximately one hour. No other attack was made upon the report or petition for fees.

Thereafter, the court granted to the conservator a fee of \$2,000.00 and a fee to his attorneys of \$1,000.00.

If I may briefly compare the two cases, in the one case, the conservator case, which I freely admit was an important case, there was a run on the Association at the time, and an excellent attorney was appointed for the conservator, and the conservator was an excellent man. As I say, the period of the conservatorship was about three days. The attorneys filed one petition with the court during that period.

Thereafter, they filed a petition for fees alleging 40 hours of services. And one hour devoted to the hearing on that petition in the court.

The fee awarded to the attorneys was \$1,000.00; to the [647] conservator was \$2,000.00.

In this case the period of receivership was three months. I made approximately four court appearances during that period in the presentation of petitions on behalf of the Receiver, such as a petition for permission to renovate the apartments, pay bonuses, petition in chambers to have me appointed as the Receiver's attorney.

After the close of the three-month period of the receivership I devoted six court days, perhaps four, what we would regard as full court days, and two half court days, in defending the Receiver against

the attacks made upon his report and petition for fees, and a day and a half in depositions, preparation, working with the Receiver as to the evidence which would be adduced at those hearings.

In this case the fee awarded to the attorneys for the Receiver was \$1,000.00 on the basis of 130 hours, and the fee awarded to the Receiver himself was \$6,000.00.

That concludes my remarks with reference to the fee, except that I might make this statement:

Any lawyer is embarrassed to come before a court and state in his opinion the fees fixed by the court are too low. No lawyer likes to be placed in the distasteful position of arguing about his fees with the court or with counsel.

I am distressed that it should have been necessary for me to ask the court for this opportunity. I thank the court [648] for having granted me the opportunity to present my petition.

I am open to any questions concerning my petition or any other facts which took place during the receivership.

The Court: Having met you outside the court as well as in, and having a personal liking for you, it is embarrassing to the court to have the matter come up.

You will recall at the very outset the court had Mr. Hallberg here. I had asked him to come in. He was not on the list of persons who wanted to be appointed receivers.

I felt, from an acquaintance and the reputation of the man, that he would serve here as the court

desired a receiver to serve. I said to Mr. Hallberg, and I think I said to you at the very outset, that one of the reasons why Mr. Richman has been removed is that he went out and got a life contract for work at an excessive fee.

And there was ample evidence here in court that the fee he was charging was excessive. This was primarily a property management affair. For the Receiver it was to be less demanding in one sense, if it had run its normal course, than if he were the trustee under the Richman Trust, for the trustee under the Richman Trust had broader powers and duties than simply those of property management.

The Court was interested, however, that the expense of a brief court supervision of these properties, pending what was then determination of an appeal, or it was a promised [649] appeal then, or the possibility of settlement, the court was interested that the court's administration of the property should not be as costly as that which the court had found was excessive. I expressed that to everyone in the case.

Now, Mr. Hallberg asked for less than he got out of the court. I increased, not the prayer of his petition, but the tenor of his testimony, because I felt that he had not given any account to the element of having to account so fully in court, as well as by the accounting which he had prepared and filed.

He was brought before the court almost as if he were accused of a crime here and was treated by some of the parties to the suit, or by one of the par-

ties to the suit and one of the attorneys to the action with less respect than I have seen embezzlers treated when I was handling the criminal calendar of the court.

So far as the court's desire to hold down the expense is concerned, that is always a desire of the court and should always be a desire of the court.

I remember Judge James—I am always remembering what other judges have said, which is perhaps what lawyers are supposed to do, because it is what other judges have said, which establishes a body of precedents by which we proceed.

I had occasion to resist a fee before Judge James in a [650] matter where an involuntary petition in bankruptcy had been filed. The creditors had become personally dissatisfied before the day of the hearing on whether the man should be adjudicated a bankrupt.

The only thing that remained was the fee. The attorneys said, "Well, this was a large estate of a bankrupt. The creditors' claims were large. The fact that relatives had come forward and paid them off doesn't relieve us of the fact or the history. Here I, as an attorney, have rendered services concerning a large sum of money, even though the services didn't take a lot." A thousand dollars, I thought, was too much.

Judge James then said, "Lawyers should always remember that the lawyer exists for the litigation and not the litigation for the lawyer. The court exists for the litigation and not the litigation for the court."



He went on to point out some of the more idealistic statements which have been given by the writers on ethics, and the professional as distinguished from the business characteristics of the legal profession.

So I thought you were going to have an economic administration. When the petition came in, the accounting, the court was impressed that the attorney for the Receiver rendered every possible service. I could see no purpose, for instance, in going to the bank with a client to open a bank [651] account, particularly where the client had accounting experience, was an established businessman, had been a controller of corporations, and perfectly capable of opening a bank account without the presence of an attorney, or more than the most casual legal advice on it.

It seemed to me that the legal services had been rendered, no doubt, to the number of hours claimed, but to a greater excess than the requirements of the case were.

I at one time acted as attorney in Los Angeles for a corporation which had many properties in this locality, which it had foreclosed upon during the depression days. And I recall, although their business was property management—they had many apartment house managers around Los Angeles—that the requirements of their resident attorney, under corporate management, were such as to not require a terrific amount of time or to require all the services that are set forth here.

The court was disappointed, too, to have a tele-



phone call, I think, from Mr. Enright—someone from his office—after we had had our conversation here on, I think it was, November 30th, in which the court had indicated that an order should be prepared for the appointment of Mr. Hallberg as Receiver, and Mr. Hallberg should then qualify, and we fixed the bond.

Then I had a call from Mr. Enright or someone in his [652] office to the effect that Mr. Hallberg was out collecting rents and demanding things of apartment house managers, exercising the active duties of a Receiver, and had a lawyer with him, which it turned out was Mr. Whyte.

The court had not signed any order. The proceedings started as a *de facto* receivership, without the *de jure* qualifications.

The Receiver had not taken the oath required of receivers, had not posted the bond required of receivers, had not been appointed by a formal order required to appoint a receiver.

The quality of the legal advice to a man to go forth and embark upon the actual administration before he was qualified legally to do so was not a quality of advice that I am sure you generally hand out, Mr. Whyte, because you are known for being associated with cases of considerable magnitude in these courts.

I had some qualms when Mr. Hallberg told me he wanted you as his attorney, because I felt that, living up there in the ivory towers with O'Melveny & Myers all these years, your taste would be pretty rich for fees. You are accustomed to a pretty high

standard of compensation. And I had in mind that you would get something more nearly like I got when I worked for a corporation, where my fees were fixed by a hard-headed board of directors, or, rather, my bills were approved by them, and sometimes the bills were reduced simply because [653] they weren't willing to pay the amount asked for the services which had been rendered.

Then we proceeded in a rather relaxed, it seemed to me, course here, in which the time was spent without all of it being required. You came in and fought for the justification of the Receiver's administration, when the administration was under fire.

The court found it had been a good administration. Perhaps I was not as liberal as I should have been in awarding you fees for representing Mr. Hallberg during those rather trying days in court, where his every act, from the time that he did similar work, although upon a different legal basis in Chicago some twenty years ago, down to the very moment he was on the witness stand, that I think perhaps I was a little too conservative in the fees.

We have out in this courtroom a little placard on each of the tables which I modeled after the one in Judge Mathes' courtroom, which he in turn modeled after the one in Judge Jenney's courtroom. I don't know where Judge Jenney bought it. Various judges around here use it. It requires counsel to perform their duties in the courtroom in certain ways, some of which are merely etiquette and some of them are suggested by the acoustical efficiency in the building.

For instance, you are supposed to stand at the lectern when you ask questions. I don't think you stood there once, [654] except when you made argument. You lolled around the courtroom in your chair, without any disrespect to the justice courts, as if this were a justice court. The justice courts proceed in a relaxed sort of in-chambers fashion; the federal courts do not.

So we began with an unlawful, improper administration, which the appointment of an attorney for the Receiver is the very thing the attorney is supposed to see doesn't happen, because these receivers are busy men and they are not acquainted, unless they are often receivers, and Mr. Hallberg has not been often a receiver, or if ever an actual receiver before, and I understand from him that if his experience in this case is an example of it that he doesn't want to be one again, because of the criticism and acrimony which attends being a receiver in situations which grow out of family unpleasantness, such as we had here, where litigants have the temperament that was expressed in some places here.

If you had administered an estate in probate in California and the corpus of the estate were the amount of money which was handled by Mr. Richman,—I don't mean the value of the fee of the property, because Mr. Hallberg was essentially a property manager—but if you had administered an estate which handled the amount of money Hallberg handled as Receiver you would have received \$1,770.00.

Of course, you probably think that doesn't apply because [655] the total value of fee of the various properties involved was over a million dollars.

Now, since all of these things have been considered and with the time the court has now had to reflect upon it, I think I was a little low so far as you are concerned. I think I was, to put it colloquially, right on the button so far as Hallberg was concerned.

I will reconsider the fees for the attorney informally, without the necessity of further petition. We don't want to run the fees up any more than they are now. But now, let's start out.

Mr. Richman, if you want to get in this—you are a lawyer and you have had a lot of experience and you don't have to answer me if you don't want to—but my idea is to start with you, just because you are at the right of the room, and proceed across to Mr. Whyte, who is most perhaps directly interested, except you, and find out what you think these fees ought to be.

Do you want to express yourself, Mr. Richman? I don't mean in great detail as to why, but just give me a figure of what you would consider a fair fee for the attorney, and then Mr. Enright and then Mr. Camusi and finally Mr. Whyte.

Mr. Richman: Any statement I would make would be biased by the evidence and my knowledge of the thing. The evidence was presented to the court. Your Honor decided one way on it, [656] or evidently has decided one way, and my views are



the other on it. I refer primarily to the smog matter, the mess——

The Court: I took that into consideration. Hallberg was delinquent in that; so were you.

If Hallberg had been fully advised legally, I don't think he would have been delinquent.

Mr. Richman: I think that an attorney should be responsible for his misdeeds as well as his deeds. He made himself a lot of work there and created a great deal of embarrassment to me in being charged criminally with violation. There was no reason for it.

Under the circumstances, I feel that what he did wasn't done properly and caused himself a lot more work and also brought on a lot of discredit to other individuals on that.

I think he has been paid amply for the services he rendered, the type of services he rendered.

The Court: What do you think of it, Mr. Enright? [657] \* \* \* \* \*

Mr. Whyte: May I say one word today, so I won't forget it tomorrow. I felt rather badly when the court made the observation a moment ago I lolled about the courtroom and until the final argument I never stood at the appropriate place in addressing the witness.

I want the record to show that the court's bailiff came to me on, I believe, the second day of the hearing. I think I had violated the court's placard with respect to standing and addressing the——

The Court: Excuse me just a moment. Another



judge has a question which he says is somewhat urgent. I will call him.

I don't mean what you are saying isn't important, but when a judge says it is urgent, I like to respect him. (Short recess taken.)

The Court: The last comment I had was that I was too easy on them.

Mr. Whyte: The first day of the hearing I recall I did overlook the instructions on the counsel table with reference to standing at a particular place when addressing the witness. [659]

The second day of the hearing the court's bailiff came to me and called my attention to the rule, whereupon for the rest of the hearing I recall distinctly I stood at the end of the jury box, which was one of the few places he pointed out to me as being a proper place to stand.

The Court: Well, I am sorry then, Mr. Whyte. I remembered your misfeasance and forgot your compliance. I simply mentioned it to indicate that at the very beginning, when the man should have taken his oath and been bonded, after having been appointed upon a written order, he went forth unlawfully and at the very conclusion the attorney was not standing by the courtroom rules, both of which acts I attributed to a lack of your usual diligence. I know you are generally pretty sharp on these things.

But it seemed to me you had missed somewhat your usual acute attention to detail in this particular representation.

Mr. Whyte: One other comment I should like to make——

Mr. Enright: I would like to make a comment.

The Court: You can make all the comments you want to.

Mr. Enright: I prefer to proceed then.

The Court: Let me go in the courtroom for a few minutes and I will excuse the people until 11:00, and then we will proceed. (Short recess taken.)

The Court: You take as much time as is reasonably necessary [660] to present your position.

Mr. Whyte: Could I correct one statement on the record before Mr. Enright begins, if I may?

The Court: Surely.

Mr. Whyte: This is the first time that I have received the intimation that I am to blame for the alleged dereliction of duty of Receiver in connection with the Smog Control citation.

The court will recollect the testimony that Mr. Hallberg submitted the contracts made by Mr. Richman with the smog installation people to me on the day before Christmas.

I took them home with me and advised him shortly after Christmas that he was bound by the contracts and to go ahead and perform them.

Mr. Hallberg testified that on or about the 2nd of January he instructed his bookkeeper to mail the plans and specifications to Oxyaire, which was I think the name of the installation corporation.

The bookkeeper didn't do it for one reason or another, and then on the 15th or 16th of January Mr. Hallberg received a warning notice. That no-

tice was never called to my attention, as Mr. Hallberg himself testified in court.

I knew nothing whatever about the impending danger of the County Smog Control authorities cracking down until the 29th or 30th of January, when the formal citation was received. [661] That was the first information related to me by Mr. Hallberg that he was in danger of being cited by the county or city authorities. The warning notice was never referred to me, and I had advised the Receiver in December that he was bound by the contracts and to go ahead and perform. That is all I had to say, your Honor. [662] \* \* \* \* \*

The Court: The court told him—that is one of the conferences I think specified in the petition—that it felt it would be better to make quarterly reports.

At that time I was in full expectation of an appeal from the principal judgment, and in the interest of economy and considering the simplicity actually of the administration of those apartment houses, I thought that quarterly report would be adequate. The Rules contemplate there may be exceptions; at least, the court thought they did. And some of the other judges, who had experience in these matters far beyond mine, think they do. [664]

So if there is fault there it is the fault of the court. It is not the fault of either Mr. Hallberg or Mr. Whyte, that there wasn't an accounting at the end of the month. [665] \* \* \* \* \*

The Court: Well, I don't consider the payment on the 27th as an imprudent thing, for a person

owing a bill, due on the 1st, do you? Don't you sometimes pay your bills a day or two ahead of time?

Mr. Enright: Ordinarily sometimes, yes; nothing unusual about that. This was different, your Honor. Here an order was made on the 26th.

The Court: What was the order on the 26th?

Mr. Enright: That the Receiver discontinue his active management and only collect the moneys up to the 28th and retain the money in the bank and the cash under his control.

The Court: Of course, there might be many considerations there. A receiver administering a property on which there is a deed of trust, which was amortized over a period of time, about to surrender it to a new owner, not a person who didn't have any prior interest, but a person who is assuming the [669] duty of management, control of it for the first time, might feel that it would be an act of prudence to put it in condition so that the person could have a little time to orient themselves to the ownership and its obligations before the payment commenced to fall due. He was only giving her 33 days. It was a type of thing the court could, unless I committed error in the memorandum, which also contains this attorney's fee fixing, that the court could adjust that by requiring that the person for whose benefit it was paid bear the burden, and I think Mr. Camusi conceded that in court at the hearing.

Mr. Enright: Oh, yes.

The Court: It was just sort of a matter of ex-



pediency of the legalities and equities which were susceptible of adjustment and were adjusted by the court in very little time. I could conceive of someone in almost every one of the big law firms in Los Angeles advising a receiver, under those circumstances, to pay that money. [670] \* \* \* \* \*

The Court: You think it is a little low?

Mr. Camusi: I would say this: If he has put in this number of hours and if it all was devoted to matters that are clearly within the scope of his duties as attorney for the Receiver, I would have to say it was low or I would be dishonest about it.

\* \* \* \* \* [680]

Mr. Camusi: I would like to make one more comment for the record. It always seems that any time anything comes up, why, the plaintiff and defendant attorneys are not in agreement, even though it involves a third party.

I don't know Mr. Whyte personally and I am not making statements which are obviously contrary to Mr. Enright's ideas because I want to be contrary to Mr. Enright, because I don't. I wish I could be more in agreement with them at this time, but I just feel that we came into court and we asked for a receiver. It was very important to our position.

We asked for a receiver. He has to have an attorney, and if we are going to not be fair at this stage of the game, when it comes to fixing a fee, I feel it just may hurt me personally in the future in trying to get any attorney interested in taking a job that may be of ultimate benefit to my client.



I think we are very satisfied with the final result in our case and now we have gotten what we want—I figured what we got we were entitled to—I think we would be less than fair if I came in here at this stage of the game and said I thought the fees were reasonable, when I thought they were not.

[Endorsed]: Filed March 1, 1955.

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[Title of District Court and Cause.]

DEPOSITION OF ROY E. HALLBERG

Taken at Los Angeles, California, April 22, 1954,  
before Kathryn A. Kirby, Notary Public.

\* \* \* \* \*

ROY E. HALLBERG

having been first duly sworn, deposed and testified  
as follows:

Direct Examination

By Mr. Enright:

Q. Mr. Hallberg, you have not designated in the petition filed in your behalf the amount of fees you seek for your services as receiver?

A. That is correct.

Q. Have you determined in your own mind what compensation, that is, the amount of dollars, you would desire to receive?

A. No. I have left that up to the court.

Q. I see. Will you state for the record your address?

A. 1202 Seaview.

Q. That is your residence address?

A. Residence.

(Deposition of Roy E. Hallberg.)

Q. What is your business address?

A. The same address.

Q. Do you use any other address for business purposes or——

A. Not now.

Q. ——otherwise?

Mr. Enright: What answer do you have, Miss Reporter? [3\*]

(The answer was read by the reporter.)

Mr. Enright: Q. Have you had a business address at some time in the past?      A. Oh, yes.

Q. Would you state what the business address was?

A. Well, I had—do you remember the one up on Foothill Boulevard?

Mrs. Hallberg: I think it's 18 something.

The Witness: I think it was 1835 Foothill Boulevard. I think that's what it was.

Mr. Whyte: Speak up just a little bit, please, Roy.

The Witness: Yes.

Mr. Enright: Q. When did you have that address at 1835, or approximately 1835 Colorado in Pasadena?

A. Oh, about two years ago. I have most of my business correspondence directed to my home, wherever I have lived.

Q. What was the nature of the business you conducted at this address on Colorado?

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\* Page numbers appearing at top of page of original Reporter's Transcript of Record.

(Deposition of Roy E. Hallberg.)

A. That was Morgan Construction Tooth Company.

Q. Morgan Construction Tooth Company?

A. Yes.

Q. How long did you engage yourself at that address for the Morgan Construction Tooth Company?      A. Oh, about six months. \* \* \* \* \* [4]

Mr. Enright: Q. What was the nature of that business?

A. Construction equipment. That was a manufacturing company.

Q. What did the company manufacture?

A. Replacement parts for construction equipment.

Q. What parts?

A. It was the tooth, if you are familiar with heavy earth moving equipment.

Q. I am quite familiar with it.      A. Yes.

Q. Will you explain in what respect did this company manufacture parts for heavy earth moving equipment?

A. Well, they manufactured replaceable teeth.

Q. To be replaced on boom shovels, for example?

A. On power shovels, rippers, things like that.

Q. What was your association or status with that company?      A. I was vice-president.

Q. What were your duties?

A. General manager.

Q. For what period of time?

A. About six, seven months.

(Deposition of Roy E. Hallberg.)

Q. What was the year? You have stated approximately two years ago.

A. Do you happen to know? [5]

Mrs. Hallberg: Maybe Mr. Whyte could help you with that.

Mr. Whyte: Can you tell us approximately, Mr. Hallberg?

The Witness: Well, I am trying to think. It was in 1951.

The Witness: '51. Are you looking for a chronological employment record, or something like that?

Mr. Enright: Q. Yes, that would be appreciated. If you want to state that, I'd appreciate that.  
\* \* \* \* \* [6]

Mr. Enright: Q. Would you state your employment record during the past 10 years, Mr. Hallberg.  
A. The past 10 years?

Q. Yes, approximately.

A. All right. The Garrett Company, Brooklyn, New York.

Q. From——

A. Well, I was with them for 13 years, I believe.

Q. When did you leave them?

A. Left them as of January 1, 1947.

Mr. Enright: Q. Yes, sir.

A. And came out here.

Mrs. Hallberg: He would like to know your average earnings there.

The Witness: Would you like to know my average earnings?

Mr. Enright: Q. Perfectly all right, yes.

(Deposition of Roy E. Hallberg.)

A. About \$40,000 a year.

Q. \$40,000 a year?

A. That's what I was earning when I left. [8]

Q. Well, now, you have stated that you were with Garrett Company 13 years—— A. Yes.

Q. ——and you left Garrett Company in 1948?

A. Yes, I came out here for Refrigeration Corporation of America.

Q. Yes.

A. As Western Regional Sales Manager at \$10,000 a year, plus an override, which was based on volume. And shortly after, think I had been with them a year——

Mrs. Hallberg: About a year and a half or two years.

The Witness: That's closer to it, about two years.

Mr. Enright: Q. Did you——

A. They ran into—they got into financial trouble back east, and they wanted——

Mrs. Hallberg: Company dissolved.

The Witness: Yes, that was part of the parent company. The parent company was Noma Electric.

Mr. Enright: Q. How would you spell that?

A. N-o-m-a. They dissolved the company, and the assets were sold about a year later.

Q. They dissolved which company, Refrigeration Corporation of America?

A. Correct, that's the one. And it wasn't too long after that where I began to have trouble with my back, so my employment record there is a little confusing from that [9] point on, because I had to



(Deposition of Roy E. Hallberg.)

go to the hospital and I was out of circulation quite a bit of the time.

Q. Yes. Well, now, just to space it here a little bit, the year and a half to two years with Refrigeration Corporation of America, that would commence early in 1948, is that right?

A. It commenced in January, 1947.

Q. And terminated—— A. In October, 1948.

Q. ——in what year? A. October, 1948.

Q. About 1950? Then you had difficulty with your back? A. That's right.

Mrs. Hallberg: You were still tied up, weren't you?

The Witness: Well, yes, I have still got a tie-up there with the company that I have an interest in in Warrenton, Missouri. I was doing some special work for them?

Mr. Enright: Q. When was it? What's the name?

A. That was right immediately following that.

Q. Following what, Mr. Hallberg?

Mrs. Hallberg: October, 1948.

The Witness: October, 1948. [10]

Mr. Enright: Q. Miss Cosgrove or Mrs. Hallberg stated November, 1950. Is that right?

Mrs. Hallberg: No, October, 1948.

Mr. Enright: Q. What is the name?

A. Binkley Manufacturing Company, Warrenton, Missouri.

Q. Yes, and you still are associated with that company?

(Deposition of Roy E. Hallberg.)

A. Oh, yes. Yes. Let's put it this way: I have an interest in the company.

Q. That is a corporation, I take it?

A. It's a corporation.

Q. In what state? A. Missouri.

Q. Missouri corporation? A. Yes.

Q. I assume that that's part time?

A. I have done special work for Binkley from time to time, yes.

Q. Then after the Binkley Manufacturing Company, next is the Morgan Construction Tooth?

A. That's right.

Q. You previously stated, I believe, it was about six months with Morgan Construction Tooth?

A. Yes.

Q. That is what year? [11]

A. In 1951, last half.

Mrs. Hallberg: '1, I think, isn't it?

The Witness: 1951, I am quite sure.

Mr. Enright: Q. 1952? A. No.

Q. And Mrs. Hallberg thought possibly 1951?

What employment have you had since Morgan Construction Tooth in 1951 and 1952?

A. Oh, I did some special work for Narmco.

Q. How do you spell that? A. N-a-r-m-c-o.

Q. N-a-r-m-c-o, yes.

A. Down at Costa Mesa.

Q. Costa Mesa? A. Yes.

Q. Any other concern that you have been employed by?

(Deposition of Roy E. Hallberg.)

A. No, just special assignments I was doing for them.

Q. For whom?

A. I said these companies, like Narmco.

Q. How long were you employed by Narmco?

A. About a year, I think.

Q. What year would that be?

Mrs. Hallberg: September of '52 to October '53.

The Witness: September—thank you. [12]

Mr. Enright: Q. September '52 to October '53?

A. '53, yes. \* \* \* \* \* [13]

Mr. Enright: Q. But you are one-fourth owner of the Morgan Construction? [18]

A. That's right.

Q. Now, you stated you were general manager, is that correct, of Morgan Construction?

A. That is right.

Q. What did your duties consist of, as general manager?

A. Oh, all the office procedure, running the salesmen, doing some sales work, and lining up production.

Q. Now, under office procedure, would that be keeping the books?

A. I helped on that, yes.

Q. Will you explain what you mean by "you helped on it"?

A. Well, we had a public accountant in there that was setting them up, and I did quite a bit of the bookkeeping work to keep it current.

(Deposition of Roy E. Hallberg.)

Q. That would be making the entries of expenditures of money and—— A. Oh, yes.

Q. How about receipts of money, would you make them? A. That's right. \* \* \* \* \* [19]

Mr. Enright: Q. What has been your connection with the Binkley Manufacturing Company?

A. I am a stockholder in it.

Q. Over what period of time?

A. Oh, since 1936, I believe.

Q. Other than being a stockholder, have you been an employee on a full time basis at any time?

A. Since October, 1948, and after August, 1949 I was president of the subsidiary known as Hall Industries.

Q. That is a corporation?

A. It is a corporation, yes.

Q. In what state is it a corporation?

A. Missouri.

Q. Well now, I assume from what you said that you were an employee of the Hall Industries but not an employee of Binkley Manufacturing Company; you are only a stockholder?

A. That is correct, after the subsidiary was formed.

Q. Yes.

A. Hall Industries was a sales organization for some of the products——

Q. For some?

A. ——manufactured by Binkley Manufacturing Company.

(Deposition of Roy E. Hallberg.)

Q. Now, which products did Hall Industries sell for Binkley Manufacturing Company?

A. Traverse track and other products.

Q. Traverse track curtain rods. Any other item that they made?

A. Well, that was the main product at that time.

Q. I am not informed at all on curtain rods. Would you mind telling me, are they for residential or for income property—

A. Residential— [23]

Q. —Or what?

A. Residential, income property, apartments, homes, everything, every place where they want to decorate and to curtain a window so that the curtains can be drawn away from the windows.

Q. Now, such rods are not sold direct to the residents, are they? How are they marketed, or how did Hall Industries market these rods?

A. They were marketed through distributors set up in various parts of the country from coast to coast.

Q. Oh, and Hall Industries has set up these distributors, is that it? A. That is correct.

Q. Now, where is the place of business of this Hall Industries?

A. Warrenton, Missouri.

Q. That's a corporation?

A. That's right.

Q. What address?

A. Warrenton, Missouri.

Q. Oh, it's a small town?



(Deposition of Roy E. Hallberg.)

A. Very, very small. Binkley is the major industry.

Q. What was your rate of compensation as an employee of Hall Industries?

A. I think I was working there at the rate of about——

Mrs. Hallberg: Before income tax, about \$20,000 a year [24] on that.

The Witness: Yes, that's what I was going to say, about \$20,000 a year.

Mr. Enright: Q. Over, or during what years?

A. October, 1948 to April, 1951.

\* \* \* \* \* [25]

Q. Now, do you have any particular office hours during the week as an employee of the County of Orange? A. No.

Q. Are you required to report at any time on any day of any week? A. No.

Q. Will you state how many days during the month of December you worked for the County of Orange; that is, December 1953?

Mr. Whyte: Objected to as having already been asked and answered. The witness testified very few.

Mr. Enright: Q. Do you have a desk as an employee of the County of Orange? A. No.

Q. Do you have a telephone extension number?

A. No. \* \* \* \* \* [36]

Mr. Enright: Q. Now, will you state, Mr. Hallberg, what real property of any kind or nature you have managed or owned or had experience with

(Deposition of Roy E. Hallberg.)

in Southern California during the last two or three years?

A. A 16-unit furnished apartment building in South Pasadena.

Q. Would you give us the address?

A. It's 1509 South Fair Oaks.

Mrs. Hallberg: That's South Pasadena. [38]

The Witness: And that's South Pasadena.

Mr. Enright: Q. Any other apartment buildings or——

A. Yes, I have one at 507 South El Molino.

Mr. Whyte: Is that Pasadena, Mr. Hallberg?

The Witness: That is Pasadena.

Mr. Enright: Q. Any others?

A. Only our own buildings up there.

Q. Where are they?

A. Well, those are homes.

Q. What addresses?

A. 85 Glen Summer, 90 Glen Summer; built both of them ourselves.

Q. You mean those are new residences that you built? A. Yes, that's right.

Q. Any other real property that you have had experience with or managed or were in any way connected with in Southern California?

Mrs. Hallberg: 1202; 218 Fernleaf; 218 Fernleaf, and 1202 Seaview.

The Witness: Well, 1202 Seaview was the——

Mrs. Hallberg: Three unit.

The Witness: Three units there. We built there.

Mr. Enright: Q. Now, you have enumerated

(Deposition of Roy E. Hallberg.)

five different parcels of real property. Any others?

A. Yes. In California, no. Oh, there is 218 Fernleaf. That's a house I built and sold. [39]

Mr. Whyte: In what city, Mr. Hallberg?

The Witness: Corona Del Mar.

Mr. Enright: Q. Now, have you participated in any manner in the management or operation of any real properties or improvements upon real properties other than these six that you enumerated here? A. In California?

Q. Yes. A. No.

Q. Had you had any experience with any other real properties other than these six that you have enumerated here in California?

A. No, not in California.

Q. Have you had experience with real property in any other State? A. Yes.

Q. What real property?

A. In New York.

Q. What addresses?

The Witness: 10 Rock Ridge Road, that's what it is.

Mr. Enright: Q. Spell that, please.

A. R-o-c-k R-i-d-g-e R-o-a-d. [40]

Q. What city?

A. Larchmont, New York.

Q. Any others?

A. Yes. My own building in Chicago, 3627 North Jansen.

Mr. Enright: May I have that answer read?  
(The answer was read by the reporter.)

(Deposition of Roy E. Hallberg.)

Mr. Enright: Q. Any others?

A. Yes. There are quite a few others that were managed during a period of receiverships coming out of the insolvency of the Citizen's State Bank in Chicago—yes, in Chicago—which was located at Lincoln Avenue near Belmont.

Q. That is the bank was located that way?

A. Yes.

Q. When was it this receivership occurred?

A. That went into receivership, oh, during 1931, I believe, or '31 to '32. You are asking me to go back a long way now.

Q. For what duration of time were you connected with that receivership?

A. About a year, or more.

Q. In what capacity?

A. I was managing the buildings there.

Q. How many buildings?

A. Oh, some 40 or 50. [41]

Q. Were they different types of buildings?

A. All different types, from residences up to large apartment buildings.

Q. What would you define as a large apartment building?

A. Well, there's one hotel apartment there that had about 60 apartments in it.

Q. What is the name of the hotel?

A. Oh——

Q. That's the largest, I take it, is that correct?

A. Well, they—the incomes varied on these

(Deposition of Roy E. Hallberg.)

buildings, depending upon the nature of the building.

Q. Well, I will hold my question to unit-wise. Was it the largest?

A. In units, yes, I think.

Q. Was this 60 unit hotel?

A. Yes. That was apartment hotel.

Q. Apartment hotel? A. Yes.

Q. What is the name of that?

A. I can't give you the name of it.

Q. The location?

A. Location is on North Oakley right near Logan Square.

Q. Were you the receiver for this Citizen's State Bank? [42] A. No.

Q. Were you an employee of the receiver?

A. No, not of that.

Q. Well, who employed you to—

A. It was a trust that was set up by the sale of a dairy, the Eich Dairy, and Mr. Gus Eich had his money from that trust invested in these real estate bonds, and upon default we took over the management of these various properties.

Q. Who is "we"?

A. I was working with Mr. Eich.

Q. I see. Well, then, who was the receiver?

A. On those particular—Mr. Eich was on several of them. There were other people involved who were appointed receiver. We ran those buildings for them.



(Deposition of Roy E. Hallberg.)

Q. Will you explain further what you mean by the word "we"?

A. Well, Mr. Eich, who was still in the dairy business, was made receiver on several of these buildings. Now, I at the time had been working for Walter Larsen, a real estate operator, and got acquainted with Mr. Eich through one of his buildings, which we took over to manage; that is, Walter Larsen did, and I was running the building for him, and I got acquainted with Mr. Eich that way, and when these buildings came in, we set up our own operation of these various buildings. I was directly in charge of all of them. [43]

Q. How many in number now that Eich had?

A. It was about 40 or 50 buildings. I can't give the exact number.

Q. And the largest was this 60 unit apartment so far as—

A. That's right. It may have been larger, I don't recall.

Q. —units are concerned? A. Yes.

Q. The other were industrial to residential and all various different types?

A. There weren't any industrial. It was all residential, either in apartments or apartment hotels or individual residences.

Q. You were employed there a period of one year? A. Approximately, yes.

\* \* \* \* \* [44]

Q. What university did you go to?

A. Northwestern.

(Deposition of Roy E. Hallberg.)

Q. Did you receive a degree?

A. Yes, Bachelor of Science in Commerce.

Q. Bachelor of Science in Commerce. What year?      A. 1927. \* \* \* \* \* [45]

Mr. Enright: Q. Oh, you moved from New York directly to this 90 Glen Summer? [48]

A. Pretty close, yes. That covers it pretty well, with the intervening period there of a couple months before we decided to move in there. We had—it takes time to build a house. That was a brand new house we built.

Q. That's 90 Glen Summer Road?

A. 90 Glen Summer Road.

Q. Now, you gave me an address of eighty——

A. 85 Glen Summer Road.

Q. Was that another——

A. That is another house we built. Actually, the 85 Glen Summer Road is where we moved first. We moved—built the house across the street then, and moved across the street.

Q. What do you mean by “across the street”?  
90 was across the street from 85?      A. Yes.

Q. So you built a house at 85 Glen Summer Road when coming from New York——

A. That is correct.

Q. ——and then having completed building it, then you started building another house across the street?      A. Correct.

Q. And you moved out of the 85 Glen Summer Road into the new house at 90 Glen Summer Road?

A. That is right.

(Deposition of Roy E. Hallberg.)

Q. Both were residences? [49]

A. Correct.

Q. Then where did you move to?

A. Moved to 1202 Seaview, Corona Del Mar.

Q. That is a residence?

A. No, that's three apartments there.

Q. Three apartments? A. Yes.

Q. Did you build that new? A. Yes.

Q. Now, when did you move there?

A. About a year and a half ago.

Q. Two apartments, I take it, are rented?

A. Yes.

Q. So you are engaging in the rental of those properties—— A. That's right.

Q. ——at Seaview, two additional apartments?

A. (The witness nods his head up and down.)

Q. Now, what's this 218 Fernleaf? Is that a new property, or—— A. That is.

Q. ——property you built?

A. I built it.

Q. When did you build that?

A. Oh, during the last summer.

Q. Can you state approximately when it was completed [50] with reference to your taking over your duties as receiver?

A. That was completed before.

Q. How long before?

Mrs. Hallberg: It was finished in September.

The Witness: September.

Mr. Enright: Q. Is that a single residence?

A. That's a residence.

(Deposition of Roy E. Hallberg.)

Q. The first property you referred to was Pasadena apartment building at 1509 South Fair Oaks?

A. Yes, South Pasadena.

Q. First, what is the name of the apartment house?

A. I don't know what it is now. They have changed it.

Mrs. Hallberg: I think it's still the Mira Monte.

The Witness: Mira Monte.

Mrs. Hallberg: That's what it was then.

Mr. Enright: Q. When did you acquire that? Well, I will put it this way: How long did you operate that apartment property?

A. About a year.

Mrs. Hallberg: Oh, a year and a quarter, about.

The Witness: About a year and a quarter.

Mr. Enright: Q. Did you personally operate it?

A. Definitely.

Q. How many apartments were there in it?

Mrs. Hallberg: 16. [51]

The Witness: 16 on that one.

Mr. Enright: Q. How many were——

Mrs. Hallberg: Furnished.

The Witness: All furnished.

Mr. Enright: Q. What year was it that you operated, or year and a quarter, that you operated?

Mrs. Hallberg: End of '49.

The Witness: Yes—well, it's between 1949 and '50, in around there.

Mr. Enright: Q. Did you employ a manager?

A. We did most of that ourselves.

(Deposition of Roy E. Hallberg.)

Q. Who is included in "we"?

A. Well, when I wasn't there——

Mrs. Hallberg: There was a manager.

The Witness: Well, I was talking about the actual work over there. We had a manager living in there who collected the rents and notified us of the various things that were necessary which we took care of, ourselves.

Mr. Enright: Q. You were then living on 90 Glen Summer Road, yourselves? A. Yes.

Q. What is the name of the manager?

A. Mrs. Cosgrove.

Q. That is your mother-in-law? A. Yes.

(There was a brief interruption.) [52]

Mr. Enright: Q. I have asked you concerning 218 Greenleaf, Corona Del Mar.

A. That's Fernleaf.

Q. Fernleaf, pardon me, 1202 Seaview, 90 Glen Summer, 85 Glen Summer, and this 1509 South Fair Oaks. The only other property, real property, that you owned or participated in the management of, or were in any manner connected with, was 507 South El Molino? That is Southern California property?

A. That is Southern California property. Yes.

Q. Am I correct so far, that there is only one remaining property, that is 507 South El Molino?

A. That is the only property here in California.

Q. In California? A. Yes.

Q. What is the nature of the property at 507 South El Molino?



(Deposition of Roy E. Hallberg.)

A. Four apartments.

Q. When did you acquire those?

Mrs. Hallberg: I think it was January '51.

The Witness: January, '51.

Mr. Enright: Q. Do you still——

A. January, '51. Yes, I still own that.

\* \* \* \* \* [53]

Mr. Enright: Q. Now, as to this salary of \$40,000 from Garrett Company, how many years did you receive that salary?

A. I didn't say it was salary.

Q. Salary and commissions or income,——

A. It was income.

Q. ——or compensation?

A. It was compensation. Oh, I guess it extended for a period of three or four——about four years.

Q. During what four years? [58]

A. Well, four years prior to the last, my termination there.

Q. When did you terminate your employment there? A. You got that.

Q. In 1947? A. January 1, 1947.

The Witness: No.

Mr. Enright: Q. Yes, what——

A. It was January 1, 1947.

The Witness: I am a little vague about the years back in there.

Mr. Enright: Q. Well, I am concerned about the \$40,000, is the reason I am asking you, Mr. Hallberg. A. Well, yes.

(Deposition of Roy E. Hallberg.)

Q. Now, you say you received \$40,000 over a period of three or four years, is that correct?

A. That's correct.

Q. How much of that was retained by you for your services? A. All of it.

Q. Did you pay any portion of it out to any of the salesmen or anyone working under you?

A. Well, I didn't give you the gross income on that. [59]

Q. Well, all I want——

A. I am just giving you the net income I had on that. I didn't pay anything out of that.

Q. And you received net income for your services in working for Garrett Company in the amount of \$40,000 for a period of three or four years——

A. Correct.

Q. ——ending in 1947 or 1948?

A. Let's put it as ending January 1, 1947.

Mrs. Hallberg: End of '47.

The Witness: January 1, 1947. \* \* \* \* \* [60]

Q. Now, Mr. Hallberg, did you attend to the negotiating for the changing of the insurance?

A. I did.

Q. How much time did you expend in negotiating the insurance?

A. Quite a bit of time. I contacted the previous broker who handled the insurance. I also contacted the Liberty Mutual.

Q. How many conferences did you have with Liberty Mutual on the subject of insurance?

A. I had two or three long sessions.

(Deposition of Roy E. Hallberg.)

Q. Two or three, and how many with the former broker, Mr. Dulley?

A. Two of them, and I think we had several conversations over the telephone.

Q. Did you, yourself, personally, make a survey of [67] the rental rates in the vicinity of the Western Arms Apartments?

A. Yes. In conjunction with—Miss Cosgrove did several—made several investigations there, herself—

Q. Now, what did you do?

A. —to check that. I went in and talked to the managers to find out what I could rent apartments for, and inspected available apartments to determine comparability.

Q. And you, yourself did? A. Yes.

Q. What apartment houses did you go to?

A. Over around the Oliver Cromwell.

Mrs. Hallberg: No, Western—

The Witness: Well, I was over in the next block, and—

Mr. Enright: Q. Now you are over at the Oliver Cromwell. I asked you about the Western Arms.

A. Well, I mentioned the Oliver Cromwell.

Q. Well, I'd like to confine you, if I may—

A. The Western Arms, yes, I went around that neighborhood, looked at the various buildings. We—

Q. This is what you personally did, is that right?

(Deposition of Roy E. Hallberg.)

A. Yes. I drove around that entire neighborhood and checked the various buildings there and——

Q. How many apartment houses did you check in that vicinity?

A. There are very few of them right in that vicinity [68] there. The nearest one on Western is down the street about three blocks and it's the mixed building.

Q. You checked that one?

A. I checked that one.

Q. Now, what other building did you check?

A. Those are the ones right there.

Q. Those is a poor——

A. I am talking about the smaller buildings. Those are residences in the neighborhood, and I went down the street south about a block and a half and saw that big apartment building on the corner, which is a mixed building.

Q. That's a mixed apartment. That's the only apartment house you checked in that vicinity, isn't it, of the Western Arms?

A. That's right. No. Also the building one block directly West of the Western Arms which is very comparable.

Q. Now, did you personally make a survey of the apartments in the vicinity of the Oliver Cromwell?

A. Yes, I did that.

Q. How many apartments did you personally——

A. I went into many of them over there and just inquired about their schedules.

Q. Did you make any investigation as to the

(Deposition of Roy E. Hallberg.)

rates of rents in the vicinity of the Canterbury, the La Loma, or the third apartment house?

Mr. Whyte: Fountain Manor? [69]

Mr. Enright: Q. Fountain Manor.

A. Yes, I did. I checked those—some of those buildings up there and each one of them, just to get a general idea of the rentals that were being paid for apartments there.

Q. You personally did?

A. I did, definitely. \* \* \* \* \* [70]

Mr. Enright: Q. Tell me what other did you do as receiver other than the insurance and surveying the rental rates in the vicinity of these five apartment houses?

A. I worked on the accounting record to change the arrangement so that the individual buildings would show up without too much difficulty. I had the files changed around so that we could find the bills whenever we wanted to. I changed the listing of the accounts payable in such a manner that they could be located per company and also when they were paid; the check numbers are right on the bills so they'd have a cross-index by numbers.

Q. Yes.

A. I checked Harrison several times on his accounting. I had to help him balance the cash on two occasions.

Q. Yes.

A. I had to have him rewrite one whole page because of having made errors in his additions and



(Deposition of Roy E. Hallberg.)

carrying his totals across. I assured myself that all moneys that came in were duly recorded.

Q. So far I think your enumeration here has been accounting records, by listing accounts payable, check Harrison a couple times. Now, that all pertains to accounting, doesn't it? [71]

A. Most of that does, yes. I also went into the various buildings and looked at the physical plants and checked the basements, type of equipment they had.

Mr. Whyte: I am going to remind the witness that he has a right to refresh his recollection whenever necessary for him to do so.

Mr. Enright: Q. Can you enumerate any other major item of service, such as accounting, insurance, surveying rent conditions and checking the buildings that you rendered while receiver?

A. Definitely.

Q. That took time, your time? Could you enumerate what they were?

A. At this point it's a little difficult to enumerate every little item, thing that was done.

Q. No, I just wanted the major items, not every little item yet, Mr. Hallberg.

A. Well, let me see. Up at Fountain Manor we had a problem there with a sink in the basement which required the services of a plumber and also the hot water heating system was causing leaks in various lines, and I had quite a session with Red Lilly, the plumber.

Q. You personally did?                      A. Yes.

(Deposition of Roy E. Hallberg.)

Q. Did you talk to any other plumber other than Red Lilly? [72]

A. That was the only one I talked to at the time.

Q. Well, I mean during the whole period of November—December? A. Yes.

Q. December through February?

A. Yes. I talked to a couple other plumbers, but Red Lilly seemed to be a very aggressive individual and he completed his work in a workman-like manner, was very clean; he knew what he was doing. And incidentally, Mr. Richman used him also, and I think he worked out all right.

Q. Any other services in a general nature that you can describe or identify, rather than describe in detail? We have got plumbing now.

A. I had the problem on refrigeration.

Q. What apartment house was that?

A. Western Arms.

Q. Did you go to the Western Arms?

A. I was over there, yes.

Q. When? I don't mean the exact date, but I mean with reference to the problem.

A. The problem developed, and it was one of those conditions that caused immediate action. The managers were all notified what refrigeration to call if there had been any—if there was any—if there were any trouble, and the manager at Western Arms called the California [73] Refrigeration in.

(Deposition of Roy E. Hallberg.)

Q. Were you in Los Angeles on the day the problem arose?

A. On that particular day, I think I was. I wasn't on the job, though. Miss Cosgrove happened to be there at the time, and——

Q. So what you know about it is what Miss Cosgrove told you?

Mr. Whyte: Had you finished your answer, Mr. Hallberg?

Would you read back the witness' answer?

(The answer was read by the reporter.)

Mr. Enright: Q. Will you state what you know about what occurred there from your own eyes or from your having seen occurrences there? Did you see anything occur there at that time, yourself?

A. Are you looking at me, or Miss——

Q. You. I am interrogating you.

A. Your eyes—your glasses have a reflection, and I can't tell whether you are looking at me or at Miss Cosgrove here. I did not.

Mrs. Hallberg: You inspected.

The Witness: I did not go over there at that time. I got over there the next day and inspected it, and we called in another heating contractor, and he viewed the problem there. It was after the other California Refrigeration had let all the gas out of the system. [74]

Q. You were there and saw that, did you?

A. No, I was there the next day.

Q. The next day? A. Yes.

(Deposition of Roy E. Hallberg.)

Q. You saw all of the gas out of the system, didn't you?

Mrs. Hallberg: I was there, but they didn't tell me they were taking such a drastic step. One can't see gas in or out of the system.

Mr. Enright: Just a minute, if you please. If you want to go on the record, it's all right with me, Mrs. Hallberg.

Mrs. Hallberg: I'd just as soon.

Mr. Enright: Did you take it down, Miss Reporter?

(The record was read by the reporter.)

Mr. Whyte: Do you want to complete that answer?

Mrs. Hallberg: I would like to.

There was just one refrigeration unit out at the time, and I knew California Refrigeration had been called in. I was in the basement asking him about it, and he said he was getting along fine. That was at 4:30 in the afternoon.

At 6:00 o'clock he found Mrs. Kennedy in a guest's apartment having dinner, and informed her that he had let the gas out, and he later told me he had been letting it out all afternoon.

Mr. Enright: Does that complete it?

(Mrs. Hallberg nods her head up and down.)

Mr. Enright: Q. Now, Mr. Hallberg, other than this refrigeration and the plumbing problem and the accounting problem, the insurance and the survey of rentals, what other services did you render of a general nature that you can identify?

(Deposition of Roy E. Hallberg.)

A. We had that matter of parapet at the Canterbury.

Q. To whom did you talk or discuss that problem with?

A. I went up there and went up to the roof, checked the construction up there, and the roof apparently was in very good condition, and after seeing the roof and what was recommended, decided to contact the Building Department further, and as a result of the contact with the Building Department, a new recommendation was sent through by the Building Department which was not quite as involved as the first one was.

Their recommendation was not to interfere with the parapet directly over the entrance-way and to reinforce the parapet, which they suggested be left, which they would allow to be left, and to cut off the balance of the parapet.

Q. Do you know if—

A. Incidentally, I might mention here that I had no knowledge of any question on that parapet until about the middle of January when the files were sent to me by Mr. Richman. I thought I had had—I thought I had received all the files concerning the building, as ordered by the court, but Mr. Richman sent [76] me those afterwards.

Q. So your time was expended on the parapet wall problem after January, about the middle of January, 1954?

A. Some time after, that's right.

Q. Now, do you personally have any knowledge



(Deposition of Roy E. Hallberg.)

of any experience Miss Cosgrove had in the operation of apartments other than the real property that you owned here in California?

A. Well, let me give you a little of her background. She is a graduate of the University of Minnesota School of Business Administration. She majored in economics, and you minored in——

Mrs. Hallberg: In statistics and accounting.

The Witness: In statistics and accounting. She was in the investment field a good many years. In fact, she was one of two women investment counselors in New York.

Mr. Enright: Q. During what period of time?

Mrs. Hallberg: '37 to '42.

The Witness: It was prior to '42, and in her own right, she has carried through the decorating of a lot of our apartments and——

Mr. Whyte: By "our apartments," you mean those in Pasadena that you have mentioned?

The Witness: That we own, yes.

Mr. Enright: Q. That would be the El Molino, four [77] units, and the 16 units, is it, at the Fair Oaks?

A. Yes, and in New York and——

Q. Well, what apartments did you have in New York?

A. No, our own apartment in New York.

Q. Your own apartment, your residence she decorated, your home?

A. Yes. And——

Mr. Enright: Will you pardon me.

(There was a brief interruption.)

Mr. Enright: Q. Now, you were explaining, I

(Deposition of Roy E. Hallberg.)

believe, Mr. Hallberg, concerning Mrs. Hallberg's experience, and you stated she was a decorator in her own right. She had decorated your home in New York.

A. Pardon me, and homes out here, plus the fact that she has a broker's license.

Mr. Whyte: What kind of a broker's license?

The Witness: Real estate broker's license.

Mr. Enright: Q. In California?

A. In California.

Q. Well, from 1942 what was the nature of her employment, if any?

A. Well, she was with me, assisting me in a lot of my activities.

Q. Well then, as I understand it, the rental income property that she had experience with would be the El Molino, four units—— [78]

A. Yes.

Q. ——the Fair Oaks property,—how many units was that?     A. 16.

Q. And the two units, or three units you had at Seaview?     A. Yes.

Q. Are there any others?

A. Well, as I mentioned before, our building back in New York.

Q. That was your home, wasn't it?

A. Yes, that was our home. She did that.

Q. She decorated your home?

A. Yes, done the negotiation, and our speculative houses, she supervised the decorating of those.

(Deposition of Roy E. Hallberg.)

Q. Did you furnish these,—that would be the 85 and the 90 Glen Summer?

A. Yes, those were not furnished.

Q. They weren't furnished, were they?

A. Well, let's put it this way. When we sold the 85 Glen Summer Road, our furniture was in there. That was—she had done all the decorating there and the colors and color schemes and everything. When we sold the house, we moved across the street and we again decorated it and furnished it.

Q. She decorated and selected the colors for the various rooms? [79]

A. That is correct.

Q. The same for 218 Fernleaf, is it?

A. 218, the interior. That is not a furnished house. That's a speculative house. I might mention here that there was enough comment about our 1202 Seaview that we got quite a write-up in the local paper on it. That was—because of the decorating.

Q. She decorated the exterior too?

A. Well, that was harmony, colors harmonized with everything.

Q. Now, then, her experience is that of decorating these residences and——

A. Yes.

Q. ——and these units, 16 units and four units on El Molino and the Fair Oaks apartments, real estate broker, and a business counselor, is that it, investment counselor?

A. Investment counselor.

Q. That was during the period 1937 and 1942?  
Mrs. Hallberg: Yes.

(Deposition of Roy E. Hallberg.)

Mr. Enright: Q. In New York City?

A. That is correct.

Q. What company was she associated with there, if you know?

Mrs. Hallberg: Johnston & Lagerquist.

Mr. Enright: Q. Do you know, Mr. Hallberg, whether [80] or not her investment counseling pertained to the management of apartment rental income properties or rental income of any kind.

A. I can't answer that.

Mrs. Hallberg: I had a couple of clients, Dr. Austin Flint and the Cox family for whom we handled properties. \* \* \* \* \* [81]

Mr. Enright: Q. In other words, you checked each one of the bills before you——

A. I always requested the bill be right along with it.

Q. And you would check the bill against it before [88] you'd sign? A. Yes, sir.

Q. That was your method of checking up on whether or not an improper expenditure would be made?

A. The bill was supposed to have been checked, and you'd just naturally rely on somebody else to do the checking, the same as any bookkeeping office will do, or accounting office. They have to rely on some of the people they have working for them.

Q. Yes. So you relied upon Mr. Harrison to get them together, and Miss Findeisen when they were——

A. Yes, after my personal verification.

(Deposition of Roy E. Hallberg.)

Q. When they presented the bill and the check alongside of it, why, you quickly checked them, or did what is necessary so far as checking?

A. That's right.

Q. And signed it? A. That's right.

Q. So they, themselves, that is, Harrison and later Findeisen, would do the checking up on the expenditure that had been made for those materials or for the services that were rendered?

A. I attempted to keep a pretty close check on those bills to see that the check covered the amount.

Q. Well, generally, didn't you do your checking on the operation of these apartments on the week ends, [89] Mr. Hallberg?

A. I did some of that.

Q. I mean, that was the rule, wasn't it?

A. Not necessarily.

Q. You'd come in on week ends, Saturdays and Sundays?

A. Not necessarily. I came in during the week some evenings, as well as days. \* \* \* \* \* [90]

Mr. Whyte: I note that my time slip for February 25 contains the following notation: "Telephone call from Camusi re termination of receivership by settlement between [95] Richman and Mrs. Tidwell. Telephone call to Hallberg reporting on this development and asking him to be present at conference in judge's chambers on February 26."

Mr. Enright: Now, I appreciate your notes show that; you examined them.

Q. Now, does that refresh your recollection of



(Deposition of Roy E. Hallberg.)

having received that phone call from Mr. Whyte, Mr. Hallberg?

A. Not as to the termination. It seems to me it was Friday night that we received the call.

Q. Where were you on Friday, or Thursday of that week, if you know?

A. I couldn't tell you now.

Q. But you did receive the telephone call either Thursday or Friday from Mr. Whyte?

A. Friday, some time Friday evening, I'm quite sure, but I am not positive of the exact time.

Q. At that time did Mr. Whyte inform you as to the results of the conference in Judge Tolin's chambers?      A. Yes.

Q. Did he advise you of the stipulation in the court order that had been made that day?

A. I think, as I recall the conversation, it was summed up in the fact that he stated that receivership had been terminated and we were to act accordingly, and it was going to be taken over by Mr. Camusi and his client.

Q. You did not collect the rents during that period [96] Saturday, Sunday, and——

A. Well, there is a good reason for not collecting rents on Saturday, for the simple reason that——

Q. I appreciate that, Mr. Hallberg. I just want to know if you collected the rents.

A. No.

Mrs. Hallberg: Friday was the last.

(Deposition of Roy E. Hallberg.)

The Witness: Friday was the last time we collected rents. \* \* \* \* \* [97]

Q. Now, what I am driving at is this, Mr. Hallberg: It's clear that you were up at the office in the Oliver Cromwell on the 27th or the 28th. At least, that's the date of the checks; that's what I am going by. That's a Saturday and a Sunday, is that right, Mr. Hallberg?

Mrs. Hallberg: Those were post-dated.

The Witness: Those were post-dated checks, I think.

Mr. Enright: Q. Well, you signed the checks after receiving this telephone message from Mr. Whyte? [98]

A. No, no. No, those were signed before, and as I understood from the court, that any payments that were due were to be made; any bills incurred were to be paid.

Q. Where were you when you obtained that understanding?

A. Mr. Whyte got that information—no, we got that in our call to Judge Tolin.

Mr. Whyte: Judge Tolin.

The Witness: Judge Tolin, and he instructed me to pay the bills that I had incurred——

Mr. Enright: Q. When was that?

A. ——had been incurred. I didn't hear what you said.

Q. I said, when was that? Mr. Whyte has furnished you with a calendar there.

A. Must have been Sunday, March 6.

(Deposition of Roy E. Hallberg.)

Q. That would be February 28? A. Yes.

Q. Did you talk to Judge Tolin at that time?

A. I did, and—Mr. Whyte who was at my home then talked to him.

Q. What were your instructions on February 28 concerning these——

A. Mr. Whyte got the instructions.

Q. What were you told to do by Judge Tolin?

A. To keep the moneys and to pay the bills that had been incurred during the month—during the receivership. \* \* \* \* \* [99]

Q. Well now, the \$2,000 plus on the Oliver Cromwell wasn't payable till March 1st. You knew that, didn't you?

Mr. Whyte: Are you speaking about the payment on the trust deed now, Mr. Enright?

Mr. Enright: Yes, precisely. I'd like to know where we are going to come out on that \$2,000. I don't know why this man paid it out.

The Witness: You don't?

Mr. Enright: Q. No.

A. It's very simple. First of all, the interest that was included in that was for the month—that was the interest that was due, and that's due from the month preceding, and——

Mr. Whyte: Which month do you mean by "the month [102] preceding"?

The Witness: Well, the date——

Mrs. Hallberg: February.

The Witness: It's February. That was interest for the month of February, and you had a pre-

(Deposition of Roy E. Hallberg.)

payment for the balance which was to be paid on the 1st of March, if I remember correctly; and tried to get those in in time. It's normal process to get your checks in on time, especially when it comes to something like that. \* \* \* \* \* [103]

Mr. Enright: Q. But you do think, your best recollection is that those instructions were given at the time these particular checks, including this Oliver Cromwell check for \$2,000——

A. No, that was sent out—made up in the normal course of business, that \$2,000 check was.

Q. And mailed out before the 28th?

A. Why, naturally.

Q. Oh, naturally it was?

A. Why, of course. Supposed to be in there, in the office, on the 1st.

Q. I see. Well it's dated the 27th here. It wasn't mailed before the 27th, was it?

A. It could have—it could have been the 27th or [104] the 28th, the 27th it was mailed out, but it's pretty hard to——

Q. Well now, really, Mr. Hallberg, will you step up here and examine these stubs here. You didn't mail checks out before the dates they bear on here, all the series of check starting with the number 425 dated the 28th and the payroll checks that go on after that?

A. Those went out Friday and Saturday, and as far as the dates on those two checks are concerned, why, it doesn't make an awful lot of difference whether you dated them the 27th or 28th.

(Deposition of Roy E. Hallberg.)

The dates you make out your check, you may not have sent it out that same day. \* \* \* \* \* [105]

Mr. Enright: Q. Well, here you have a memorandum that may throw some light on this. Under your item—pardon me just a moment—page 7, 8A, it reads as follows: “On Friday, February 25—

A. Yes.

Q. —the reports of the three apartments, the Oliver Cromwell, the Fountain Manor, and the La Loma, were checked out.” A. Yes.

Q. “The Western Arms and the Canterbury managers reported that they had so much outstanding they would prefer to make the collections over the week end. It is not good business to make collections when the banks are closed. The apartment houses had safes for safekeeping the receipts, whereas the receiver’s office had none. The receiver was advised by his attorney to act in no capacity the morning of March 1st, Monday, and consequently the March 1st funds on hand could not be picked up. The receiver’s report mentioned this fact only in relation to the total receipts for February not being complete for comparative purposes.”

Now, is that the reason, as stated here, why you did not pick up the moneys from the two apartments on March 1st? [106] A. That’s right.

Q. I see, so it was upon advice of your attorney?

A. That’s right. \* \* \* \* \* [107]

### Cross Examination

By Mr. Whyte:

Q. Mr. Hallberg, I believe you testified upon



(Deposition of Roy E. Hallberg.)

examination by Mr. Enright that you had owned an apartment [115] building in South Pasadena consisting of 16 units and an apartment building on South El Molino in Pasadena consisting of four units, is that correct?      A. Correct.

Q. What work, if any, did you or Mrs. Hallberg do in connection with those apartments?

A. You speak of work. You mean physical labor?

Q. Physical labor, management, decorating, painting—any type of work.

A. Well, that 1509 required complete renovating. We ripped up the carpets; we hung new doors on the garages; we repaired the roof; we repainted the hallways; we redid the apartments. We put in refrigerators. We put in new stoves.

Q. By "we" you mean yourself and Mrs. Hallberg?      A. That's right.

Q. Go on.

A. Painted a lot of the apartments.

Mrs. Hallberg: All of them.

The Witness: Or painted all of the apartments, and by "painting" I got in and wielded a brush too, and laid floors. I did that.

Mr. Whyte: Q. What did you do in connection with the South El Molino property in Pasadena?

A. Well, we did practically the same thing there.

Mrs. Hallberg: Took the porches off. [116]

The Witness: Porches was taken off, the entire porch, and the entire front of that building changed.

Mr. Whyte: Q. What, if any, accounting training have you had?

(Deposition of Roy E. Hallberg.)

A. Well, I—while going to school, I did some public accounting work for an accountant in Chicago, J. L. Malby, and I did that part time.

Q. Did you take any accounting courses during your tenure at Northwestern University?

A. Naturally. Took two years of accounting.

Q. In connection with your duties surrounding this receivership, what if anything did you do with reference to the preparation for tax returns to be filed?

A. Which tax returns are you referring to?

Q. I am referring to the tax returns which were filed on or before March 15 of 1954.

A. Well, we filed a fiduciary return.

Q. What did you do in connection with that return?

A. Well, had to take the figures for the past year and combine them with the last month in order to make a complete return for the year.

Q. In connection with the preparation of that return, did you interview any employees of the Director of Internal Revenue?

Mrs. Hallberg: Yes.

The Witness: Yes, we contacted them, because of some [117] questions that we had about the filing of the return.

Mr. Whyte: Q. Again in connection with your active duties of management of the properties constituting the former Richman trust, what if anything did you do with regard to inspecting the Oliver Cromwell for defects either in the caulking

(Deposition of Roy E. Hallberg.)

of the apartment, or the exterior condition of the apartment building?

A. Well, after a heavy rainstorm we got quite a bit of rain in through the side, one side of the building, and water was coming in where the caulking had been giving away.

Q. Go on.

A. There was quite a few apartments that had water running down the walls and it spoiled some of the decoration there. Water also came in around the window panes where the putty was giving way.

Q. Anything further that you did toward inspecting or assessing, assaying that condition?

A. Well, at the moment it's pretty—can't recall any more on that other than calling in several contractors to give us bids on repair.

Q. Is that all, Mr. Hallberg, that you recall at this time?      A. Yes.

Mr. Whyte: I have no further questions. [118]

### Redirect Examination

By Mr. Enright:

Q. Mr. Hallberg, since doing part time accounting while attending Northwestern, you have not rendered services as an accountant to anyone, have you?      A. Not as a public accountant.

Q. No, or any other accounting?

A. It seems to me it wasn't too long ago you asked me a question about Morgan Construction Tooth Company. I told you I was doing the work there.

(Deposition of Roy E. Hallberg.)

Q. Accounting at Morgan Construction Tooth?

A. Yes.

Q. Now that would be the only other accounting until you reached this Richman trust matter?

A. That's right, except that in every administrative job one deals with accounting records.

Q. In December?

A. Of course, I had to keep my own records for the various apartments, our own buildings. I kept those. \* \* \* \* \* [119]

Q. Well, didn't you discuss these operating expenses with your attorney or Judge Tolin——

A. Oh, yes.

Q. ——or Mr. Camusi, or Mr. Yudall before you made out those checks or signed those checks of March 7? A. Yes.

Q. Well, now which one of the persons did you discuss it with?

A. I discussed that with Mr. Whyte.

Q. When, with reference to the time the checks were made out on March 7th?

A. Well, prior to the checks, I can't tell you the exact date.

Q. That was during that first week after you were relieved as——

A. Yes, that's right.

Q. ——as active receiver—— [123]

A. That's right.

Q. ——in charge of the property?

A. (The witness nods his head up and down.)

(Deposition of Roy E. Hallberg.)

Q. Did Mr. Whyte at that time tell you that Mr. Camusi wanted the bills paid?

A. I don't recall any such statement other than inasmuch as those bills were incurred under my operation of the buildings, they were more or less my responsibilities to have them paid.

Q. Well, who told you that?

A. Mr. Whyte.

Q. When did he tell you that?

A. Oh, in our discussions there right after the receivership ended.

Q. Was that before you talked to Judge Tolin on the Sunday evening after playing golf?

A. Yes, I think that was—it was confirmed by Judge Tolin.

Q. What do you mean by the use of the word "confirmed;" is that what he told you?

A. That's ostensibly the same thing in the conversation with Judge Tolin, and which Mr. Whyte received from him that night.

Q. Mr. Whyte didn't tell you what I said or I had told him, that the bills should not be paid; that the purchaser was going to pay the bills after February 28th? [124]

A. Yes, he mentioned your having a different opinion. \* \* \* \* \*

Mr. Enright: Q. Now, Mr. Hallberg, you have handed me a book here bearing the heading on the top of the pages "Appointments and Memoranda," and there appears to be various pencil notations and ink notations commencing November 30. Directing



(Deposition of Roy E. Hallberg.)

your attention to the day of November 30, my question is: When was that entry written, on that or after that date?

A. Oh, I think this was written about a day or two later. [125]

Q. I see. Now, directing your attention to the notations appearing after December 1st, when was that written?

A. The same time, and some of the——

Q. You haven't answered my question. Well, go ahead and explain if you want to.

A. Yes, I was going to say that those are written at night after I got home, and I got the report from Mrs. Hallberg, and they are, speaking of all the notes throughout that book,—some of the information and data was taken from notes I had on backs of envelopes and activities that happened during the day that Miss Hallberg had, Mrs. Hallberg, and more or less compiled to get a general idea of what happened and transpired during that time.

Now, they, for the most part—those were written up almost every evening. Once in a while we did pick them up the next day or two days later.

Q. So, if I understand this correctly, for the most part the notations here that are entered in this book on these various different dates commencing November 30 and ending, I believe, February 26—is that correct?

A. 26 is correct, yes.

Q. For the most part, these notations appearing

(Deposition of Roy E. Hallberg.)

on those respective days were made in this book in the evening at your home, is that right? [126]

A. That's right.

Q. Yes, and they would be made after you had received a report from Mrs. Hallberg, is that right?

A. A good many of them would be. A lot of those entries in there are as a result of my activity.

Q. Yes.

A. But they were for the most part compiled after arriving home.

Q. Yes, after who would arrive home, you would arrive home, or Mrs. Hallberg?

A. Either myself and Mrs. Hallberg.

Q. In many instances you and Mrs. Hallberg would not be together during the day?

A. That is correct.

Q. And Mrs. Hallberg would be in Los Angeles attending to the problems relating to these different apartment houses?

A. Quite often.

Q. And in the evening when she would arrive at home, why, she would tell you what had occurred?

A. As for—we discussed the problems she had encountered during her visits to the various buildings, and we'd decide—we made a lot of decisions at night as to what to do.

Q. Now, the procedure was——

A. You see, actually most of that work again is [127] glorified housekeeping, and a woman's point of view is much better than a man's, and I don't think my housekeeping ability is any better than

(Deposition of Roy E. Hallberg.)

Richman's, but I certainly had somebody with me who knew——

Mr. Whyte: I think you have answered the question.

The Witness: All right, thank you.

Mr. Enright: Q. So, for the most part, it would be Mrs. Hallberg that would go around to the houses and ascertain what the problem was, and make the decision as to how the house should be kept, and then she'd report it to you in the evening, is that right?

A. Partially correct—I made decisions and visited the property involved when important problems were involved.

Q. Well, that's usually what occurred, isn't it?

A. No. I can't say it's usually.

Q. Now, during the day, usually you'd go to Santa Ana, isn't that right; that would be week days?

A. Some days; some days I wouldn't be in Santa Ana. You notice—in fact, I met you in town here during the week, so I did come in quite often during the week.

Q. Yes, you met me in town once at the Smog Board.

A. That's right.

Q. And at the time of the hearing on the Petition for the Renovation, is that correct?

A. That's correct.

Q. That's two times?

A. That's correct. In other words, I did come in [128] to town.

(Deposition of Roy E. Hallberg.)

Q. You did come in to town the day we met down at the City Prosecutor's Office?

A. That's right.

Q. And you did come in to town the day you testified on the Renovation Petition?

A. That is correct.

Q. Well, other than those two days, did you come in during the week that you can remember now?

A. Quite often.

Q. Now, these notations that you have written down here reflect your thinking and knowledge at the time that the events occurred, isn't that right? If that's not clear, I——

A. That's, I'd say fairly accurate, yes.

Q. Well, these notes were your best——

A. To the best of my——

Q. To the best of your ability, you wrote down what the problem was and what you had done during that particular day?

A. That is correct, uh-huh.

Q. So if we were to study these notes between now and the time of hearing, we could review and ascertain the problems that you were confronted with during your term as receiver?

A. Not all the problems. [129]

Q. Well, what problems didn't you write down that you can recollect now?

A. Well, there were minor problems about renting and decorating and questions concerning tenants — a lot of things that were discussed with managers and with people whom we employed, con-

(Deposition of Roy E. Hallberg.)

tracted with for services that aren't reflected in there.

Q. But those would be minor things. Any major item, or any major problem——

A. For the most part, the major things were entered. \* \* \* \* \* [130]

Mr. Enright: Q. Now, Mr. Hallberg, you recollect, do you, verifying the Petition for Authority to Renovate [131] the various apartments?

A. Yes.

Q. You remember testifying in support of that petition, do you? A. Yes.

Q. Did you personally interview the managers concerning the vacancies that you testified concerning on the hearing of that Petition to Renovate, or did you obtain that information from Mrs. Hallberg?

A. Some of that information I obtained directly, and some through Mrs. Hallberg.

Q. Has Mrs. Hallberg been paid by you for her services in assisting you in this receivership?

A. Did you hear that question?

Mr. Whyte: Yes, I heard the question. I think you can answer it.

The Witness: Why, no.

Mr. Enright: Q. Have you made some arrangement with her for her services? A. No.

Q. None whatsoever?

A. None whatsoever.

Q. Well, did you discuss with her how much you were going to pay her?



(Deposition of Roy E. Hallberg.)

A. No, I did not.

(There was a brief interruption.) [132]

Mr. Enright: Q. Well, Mr. Hallberg, was it your intention when you became receiver here to delegate the routine matters to your wife, Mrs. Hallberg?

A. Well, inasmuch as she is a qualified and licensed broker, is quite familiar with all the details concerning an apartment building, I certainly expected to use some of her services and abilities.

\* \* \* \* \* [133]

Q. Now, directing your attention to the \$40,000 net per year that you state you received for three or four years while employed by the Garrett Company in New York, did that company pay you that money itself, or did you receive a portion of that money as commissions from third [137] persons?

A. That was from Garrett & Company itself.

Q. Your principal activity in representing Garrett & Company was in the marketing of its wines through wholesalers or retailers, isn't that right?

A. Correct.

Q. And the principal marketing was carried on in New York City or Brooklyn, if that is a part of New York, metropolitan New York?

A. I think I stated previously that I controlled the entire State of New York. \* \* \* \* \* [138]

[Endorsed]: Filed May 7, 1954.

[Title of District Court and Cause.]

DEPOSITION OF JOHN WHYTE

Taken at Los Angeles, California, April 22, 1954,  
before Kathryn A. Kirby, Notary Public.

JOHN WHYTE

having been first duly sworn, deposed and testified  
as follows:

Direct Examination

By Mr. Enright:

Q. Mr. Whyte, your petition for attorney's fees enumerates the dates on which you made telephone calls, is that correct?

A. If I may be permitted to examine the document——

Q. Well, I will aid you. Page 3, line 26, you made a telephone call to Mr. Camusi concerning the receivership development.

A. That's right.

Q. Now, noting the wording, as for example only, Mr. Whyte, of that occurrence on December 2nd, that recitation on page 3, line 26 in your Petition for Fees is substantially taken from your daily time sheet for that day of December 2nd?

A. I believe so. If you will permit me, I will examine my daily time sheet.

Q. That I want you to do.

A. My daily time sheet for December 2nd, 1953, contains this notation among others: "Telephone call to Camusi for information re latest developments."

(Deposition of John Whyte.)

Q. Yes. Now, bearing in mind that time sheet of [2\*] yours of December 2nd and also examining your petition there, are you quite sure that in substance your petition, so far as time expended is concerned, is a recitation of your time sheets?

A. This petition was prepared so far as the nature of the services performed and the amount of time expended, from the daily time sheets kept regularly as part of the office procedure in my office.

Q. The dates of telephone calls and the substance of the telephone calls reflected in your petition is a reproduction of your daily time sheets, is that right?

A. It may not be an exact reproduction, but it is based upon the daily time sheets.

Q. Your petition reflects the substance of all the entries in your time sheets?

A. I think that's a fair statement.

Q. Well, that was your intention when you prepared it?

A. Yes, certainly.

Q. So by an examination—

A. All or substantially all of the entries in my time sheets.

Q. You didn't intentionally leave out any entries on your time sheet, did you?

A. Not that I can recall.

Q. So it would only be by close analysis, and if there [3] are any left out, you didn't intentionally leave them out, did you?

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\* Page numbers appearing at top of page of original Reporter's Transcript of Record.

(Deposition of John Whyte.)

A. Not that I recall.

Q. So by examining your petition we can then ascertain the number of phone calls that were made to and from the various persons to whom you talked on the phone?

A. There may have been occasions upon which I failed to note on my time sheet every phone call which I made or received.

Q. But the time sheet that you prepared at the time is the best evidence of what did occur at the time?

A. The best evidence I have now, yes.

Q. Yes, and you would have to just strain your memory to try to recollect something that you didn't write down on your time sheet?

A. I certainly would.

Q. That's what I meant. That would be true also of conferences that you had that are reflected on your time sheet, and in turn are reproduced on your petition, conferences?

A. Yes, the conferences are reflected in the petition based upon what was noted on the time sheet.

Q. Now, you were in court on February 26, were you, Mr. Whyte, at the conference in chambers?

A. My daily time sheet for February 26, 1954, states that I attended conference in Judge Tolin's chambers [4] re settlement of case.

Q. Yes.

A. I recall that you and Mr. Camusi were present at that conference.

Q. Now, at that time you received a copy of the

(Deposition of John Whyte.)

order that was signed by Judge Tolin on that day terminating Mr. Hallberg's active duties and directing him to retain possession of money in the bank and under the control of the receiver?

A. Yes, I believe such an order was handed to me.

Q. And you have it now in your file there, haven't you?      A. I do.

Q. Yours, I believe, is undated. No, it has the typed date at the bottom, February 26.

A. That is correct.

Q. That was about 4:30 in the afternoon, or 4:00 o'clock in the afternoon, as I remember it, but it was in the afternoon anyway?

A. No, the conference was in the morning. It was at about 9:30 o'clock in the forenoon of February 26.

Q. I stand correct. My memory had failed me. Now, directing your attention to your petition or your time sheets, whichever you prefer, on February 25 you called Mr. Hallberg concerning the settlement; that's page 11, line 7 of your petition. [5]

A. I have a rather definite recollection of that matter.

Q. Before calling Mr. Hallberg on that date, you received a telephone call from Mr. Camusi. That's on——

A. It's the 25th you are referring to?

Q. Yes. Yes.

A. Yes, my sheet shows that I received a telephone call from Mr. Camusi re termination of re-



(Deposition of John Whyte.)

ceivership by settlement between Richman and Mrs. Tidwell. That call came to me at a few minutes before 5 o'clock in the evening. I then attempted to reach Mr. Hallberg's residence at Corona Del Mar by calling Harbor 3818 and obtained no answer.

I finally reached one or both of them at some time later in the evening.

Mrs. Hallberg: Yes, 8:30 at night.

Mr. Enright: Q. That's on the 25th?

A. Correct.

Q. Yes. Now on the 26th, you——

A. I told them, incidentally, at that time that I was—I had been informed that the receivership was being terminated, and that I was to meet with them in Judge Tolin's chambers the following morning.

Q. In other words, on the 25th you told them that? A. Yes.

Q. Now, on the 26th you reported to Mr. Hallberg [6] and Mrs. Hallberg the results of the conference in Judge Tolin's chambers, February 26?

A. I note from my time slip that I received a telephone call from Mrs. Hallberg asking me what had taken place at the conference.

Q. You expended no time of your own on February 27 and 28; that's the Saturday and Sunday after that Friday phone call to——

A. Yes, my time slips show that on the 27th I spent five-tenths of an hour—one-half hour—in revising the receiver's First Report and Petition for

(Deposition of John Whyte.)

Allowance of Fees, as well as the attorney's Petition for Allowance of Fees, and a proposed form of Notice of Hearing on those two reports and petitions as necessitated by the court's order of February 26th relieving the receiver of his duties as of February 28.

Q. Other than that expenditure of a half hour, which I assume was at your office or your home, there were no other services rendered on the 27th to the receivership?

A. None on the 27th, and I have no time slip for the 28th.

Q. That would be a Sunday. You next contacted Mr. Camusi, or he contacted you, rather, on March 1st?

A. If I may refer to my time slips for that date, please.

Q. Yes. [7]

A. My time sheet for March 1st shows that I called Mr. Camusi with regard to the problems connected with the turnover of the assets to Mrs. Tidwell, the payment of bills, and other matters.

Q. Will you state the substance of that conversation as best you recollect it?

A. I don't have a definite independent recollection of that conversation, Mr. Enright. However, I think one of the subjects discussed was the problem of what to do about paying bills for services rendered to the receivership or materials delivered to the apartments during the month of February, 1954, when the statements from the creditors would

(Deposition of John Whyte.)

not be received until on or shortly after the 1st of March. I say, I think I discussed that with him, because there is a further notation on my March 1 time slip that I called you regarding the listing of creditors and the amounts of their claims in the Receiver's Report.

Q. That was the substance of the telephone call to me as to the listing of the creditors of the receiver in the Receiver's Report, wasn't it?

A. I—as I recall, I explained to you that the rules, local court rules required a listing of creditors and the amounts of their claims.

Q. That's right.

A. That I was in doubt as to how best to handle that [8] with reference to persons who were creditors as of the close of business on February 28, but for whom we did not have an amount of their claim because their bill had not yet been rendered.

Q. And is that all you recollect of the conversations with Mr. Camusi and with myself on that March 1st?

A. I must have discussed some other matters with Mr. Camusi, because my time slip says, "Re problems connected with turnover of assets to Mrs. Tidwell, payment of bills, et cetera." What I said to Mr. Camusi about the problems connected with turnover of assets I don't recall.

Q. You did discuss with me, though, the listing of the creditors of the receivership, and that under the court rule, the creditors should be listed, that the amounts of the creditors' claims could be ascer-

(Deposition of John Whyte.)

tained from the various managers; isn't that right?

A. I don't recall that you told me that the amounts could be obtained from the various managers. If you did, I'm sure you must have been mistaken, because the amounts could only have been obtained from the creditors themselves.

Q. No discussion about the managers knowing what they had purchased during the month of February? Does that refresh your recollection at all?

A. I can't recall.

Q. Yes. Now you next had a conversation with [9] Mr. Camusi on March 2nd, is that right?

A. If I may refer to my time slip for that date. Bear in mind, Mr. Enright, that it's possible that there may have been telephone conversations which I had either with you or Mr. Camusi which are not recorded on these time slips, but I think I have stated that substantially all of the conversation are noted here.

Q. That I understand.

A. Yes, on March 2nd I received a call from Mr. Camusi regarding title documents to be turned over to Mrs. Tidwell and regarding the receiver's accounting.

Q. On the same day you received a call from Miss Cosgrove, is that right?

A. I did. I recollect that Mr. Camusi asked me about the deeds to various small parcels of real property belonging to the former Richman trust, the note and trust deed covering the Oliver Cromwell, the stock certificates for those few stocks that



(Deposition of John Whyte.)

were owned by the receivership. He asked where those were kept. I telephoned Mrs. Hallberg, and she told me that they were kept in a safe deposit box at one of the banks.

I then think I called Mr. Camusi and arranged for the delivery of those documents to his office by Mr. and Mrs. Hallberg.

Mrs. Hallberg: Just Mister.

The Witness: It seems to me that Mr. Hallberg was [10] going to stop by the bank and pick them up.

Q. On March 3rd, your notes show no services being rendered, do they?

A. None on March 3rd.

Q. March 4th you talked to Mrs. Hallberg, did you, on the subject of payment of post-February bills? A. Yes, I did.

Q. That is on March 4th? A. Yes.

Q. What was that conversation?

A. All I can recall, being refreshed from the notation on my March 4th time slip, is that we discussed this question of paying bills for services rendered on or prior to February 28 where the bills had not yet been received, or had not been received until after February 28.

Q. And you had a phone conversation on March 4th with Mr. Camusi concerning that same subject matter, did you?

A. I am not sure whether I discussed the same subject matter with Mr. Camusi or not. My time slip merely says that I—there were telephone calls



(Deposition of John Whyte.)

to Mr. Camusi and to Mr.—yes, to Mr. Camusi and to Mr. Enright re these matters. I believe that one of the matters must have been this—

Q. Post bills, February bills? [11]

A. Yes, February services—bill didn't come in till March 1 or after.

Q. That's right, and what did Mr. Camusi tell you on March 4th on that subject matter?

A. I can't remember.

Q. What did I tell you on that subject matter?

A. It seems to me that you expressed the opinion either then or at the time I talked with you on March 1st that you felt the bills should not be paid.

Q. Yes, and Mr. Camusi, didn't he tell you in his conversation of March 4th or after February 26th conversations as related to your time sheets that they would not pay those bills?

A. Yes, you refresh my recollection. Mr. Camusi told me either in substance or in effect some time during those early days in March that he or his client didn't desire to pay those bills. In fact, I think Mrs. Hallberg told me that Mr. Udall would not pay the bills, something to that effect.

Mrs. Hallberg: Wanted us to do it.

The Witness: And wanted Mr. and Mrs., or Mr. Hallberg to do it.

Mr. Enright: Do you have any objection, Mr. Whyte, to my finding out about this conversation at this time from Miss Cosgrove?

Mr. Whyte: None whatever. [12]

(Deposition of John Whyte.)

Mr. Enright: Do you recollect when, or what, Mr. Udall said on that subject, Miss Cosgrove, or Mrs. Hallberg?

Mrs. Hallberg: Yes, Mrs. Hallberg or Miss Cosgrove.

Mr. Enright: Yes.

Mrs. Hallberg: On March 1st when he came into the office, he wanted us to pay all the bills because they were our concern.

Mr. Enright: That is, Mr. Udall told you that?

Mrs. Hallberg: Yes, and there were one or two things that we had a question on that weren't quite satisfactory, and he wanted us to write checks and hold them on those.

Mr. Enright: And did he say anything about having picked up the money for the week end?

Mrs. Hallberg: Yes, he expressed the reason, which has validity——

Mr. Enright: Well, I am not concerned——

Mrs. Hallberg: ——inasmuch as it is on a cash basis, and of course if the rent was paid on a Sunday and applied to March, he thought they ought to pick up the money.

Mr. Enright: Now, would you tell me your best recollection of what he said to you?

Mrs. Hallberg: That was exactly what he said.

Mr. Enright: He told you that it had validity?

Mrs. Hallberg: No. That was my comment. [13]

Mr. Enright: That's what I meant, Mrs. Hallberg. I merely want——

Mrs. Hallberg: He said—he used the expression

(Deposition of John Whyte.)

that after all, the buildings were carried on a cash basis, and because the rents at any one day did not apply to any one period, he felt that they should pick up those rents, and he had so directed the managers.

Mr. Whyte: By "those rents" you meant what, Mrs. Hallberg?

Mrs. Hallberg: What had been picked up over the week end.

Mr. Whyte: For February 26, 27 and 28?

Mrs. Hallberg: Yes.

Mr. Enright: Now, continuing, Mr. Whyte——

Mr. Whyte: Off the record.

(A discussion was had off the record.)

Mr. Enright: She would testify the same if she were under oath, I am sure.

Mrs. Hallberg: Yes.

Mr. Enright: Q. Now, Mr. Whyte, your next entry as to telephone calls apparently is March 9?

A. No. I made a telephone call to Mrs. Findeisen on the 5th of March.

Q. That's correct, my error. Yes, it is, to Miss Findeisen on March 5th.

A. That's right. [14]

Q. And your next, after March 5th phone call to Miss Findeisen, is March 9 to Mr. Camusi?

A. Speaking only of phone calls now?

Q. Yes, that's right, sir.

A. Yes, on March 9 I made a call to Mr. Camusi regarding the closing of the Receiver's Ac-

(Deposition of John Whyte.)

counts and the payment of bills rendered during the first part of March.

Q. Now, you had a conference on March 7. Does your time sheet show the March 7 conference, by the way? I don't——

A. Yes, I had a conference with Mr. and Mrs. Hallberg at their home in Corona Del Mar on the evening of March 7, which was a Sunday, regarding the problems incident to final accounting and preparation of schedules.

Q. Is that the day on which you phoned Judge Tolin?

A. Yes. We had returned from dinner at the nearby Country Club. We began discussing these matters. Among others we discussed the subject of paying bills which did not come in until after the first of March covering services rendered or materials furnished during February. Mr. Hallberg then called Judge Tolin and spoke with the Judge about several matters.

He then handed the phone to me, and I discussed the subject with the Judge, who instructed me to have those bills paid by Mr. Hallberg. In fact, if I recall correctly, Judge Tolin, I think, made the same instruction [15] to Mr. Hallberg. All I could hear were Mr. Hallberg's replies to the Judge, but it seems to me they were discussing the same subject; and then I came on the phone for more specific instructions.

Q. Well, you heard Mr. Hallberg on the phone



(Deposition of John Whyte.)

at this residence and you heard him mention the subject matter of paying these bills?

A. I think he did. Yes, I think he did mention that subject matter.

Q. Do you recollect what else he said, if anything; that is, Mr. Hallberg?

A. I can't recall.

Q. Now, you in turn talked to Judge Tolin at that time?      A. I did.

Q. Did you tell him that Mr. Camusi and I had talked to you concerning this subject matter and advise the court or the Judge that there was a dispute between us?

A. I believe I did. Yes, I think I told the Judge that Mr. Enright had objected to their payment; that Mr. Camusi was amenable to the payment, or that he wanted them to be paid by us.

Q. Well, did you use the word "amenable" or—

A. I—I can't remember what word I used, Mr. Enright, but the substance of what I said was that, as my best recollection brings it back to me, that you [16] didn't wish the receiver to make the payments, and that Mr. Camusi either did or was agreeable to it.

Q. And did you tell him also that Mr. Udall had requested Mrs. Hallberg to pay them?

A. I don't believe I mentioned Mr. Udall.

Q. Now did you advise the court that these bills did not pertain to the employees' checks; it was only pertaining to various vendors of materials,



(Deposition of John Whyte.)

utilities, and things of that nature as shown on Exhibit C?

A. I didn't—I had no idea as to the detail of the bills. I—what they were, specific items had been rendered or services performed, I didn't discuss.

Q. You didn't know, is that the—

A. I don't know; I don't think I knew. I knew that they covered, or Mr. Hallberg had reported that they covered services rendered or materials delivered during the month of February for which no billing had been received until on or after the 1st of March. [17]

\* \* \* \* \*

Q. Did you realize or know that there was about \$6,000 involved in that transaction?

A. In what transaction?

Q. In the payment of these bills after March 7, 1954. [18]

A. Before I answer, may I check my time slips here to see whether I had notified you?

What was the last question, Miss Reporter?

(The pending question was read by the reporter.)

The Witness: I note from my March 10 time slip that I conferred with Mrs. Hallberg and Mrs. Findeisen, the bookkeeper, at the Oliver Cromwell regarding the Receiver's Final Report to the Court and the makeup of the schedules to be attached thereto. I had no idea of the amount involved, because this Schedule C which reflects disbursements made by the receiver as directed by the court cov-

(Deposition of John Whyte.)

ering liabilities incurred prior to February 28, 1954, but not prepared until after that date, was not ready at the time I discussed the matter with Mrs. Hallberg and Mrs. Findeisen on March 10.

Mr. Enright: Q. And you further conferred with Mr. Hallberg on March 13, going over the report and the schedule, didn't you? A. No.

Q. I am taking that from your petition on page 13, line 10. On March 13 you have listed there as a service being rendered going over the report and schedules. I assume it to be of the receiver.

A. Just a moment. No, both my petition and my time sheet for March 13 state "Going over draft of his report and schedules to be attached thereto with the [19] receiver."

Q. That's what was my question, went over them with the receiver, Mr. Hallberg. A. Yes.

Q. On March 13. A. That's right.

Q. Then the next date you rendered services was March 15 concerning the subject matter of petition for fees. You had a conference with Judge Tolin?

A. I did.

Q. And the next day——

A. May I amplify my answer? On March 13 Mr. Hallberg came to my office, and we went over a yellow draft of his final report and schedules, which was thereafter prepared in final form and mailed to him for signature.

Q. Yes.

A. Now, on March 15, what was your question, sir?

(Deposition of John Whyte.)

Q. Your next rendition of services is on March 15 when you had a conference with Judge Tolin?

A. I did.

Q. And that is concerning fees? A. Yes.

Q. Who was present?

A. I was the only person present.

Q. What was said? [20]

A. To the best of my recollection, I asked Judge Tolin whether or not he desired that I name any specific amount in my petition for fees. That question was prompted by the fact that Judge Tolin had instructed the receiver not to name a specific amount in his petition for fees.

Q. When was that instruction given to Mr. Hallberg, if you know? A. I do not know.

Q. When were you advised of it?

A. That I don't know either. I know that Mr. Hallberg so advised me at one time.

Q. Now the next day you rendered services was on March 17. You phoned Mr. Camusi concerning closing the receiver's books? A. I did, sir.

Q. At no time did you inform me or Mr. Richman of the direction given by the court as you state on March 7, Sunday evening, 1954, is that correct?

A. Not that I can recall. By that, you mean at no time prior to the filing of my—of the receiver's first and final report and petition for fees with the court and the mailing of a copy thereof to you?

Q. Was there anything else said by Judge Tolin concerning the subject matter of fees, either by him or by yourself on March 15? [21]

(Deposition of John Whyte.)

A. Yes.

Q. How long did the conference last?

A. It was a very short conference, because Judge Tolin was about to take the bench.

Q. What is "very short"?

A. Well, I'm sure it didn't last—I had another matter before Judge Tolin at the time concerning the Inglewood Federal Savings and Loan Association. To the best of my recollection, that was the principal matter which I discussed with him.

Q. What is "very short" was the question, Mr. Whyte?

A. Whatever conversations I had with the Judge regarding my petition for fees were less—were five minutes or less, to the best of my recollection.

Q. And all you recollect that was said in that five minutes or less is that you asked him whether or not you should specify an amount?

A. And his reply.

Q. And his reply?           A. Yes.

Q. And——

A. His reply was that—my recollection is refreshed a bit by your question—his reply was that something to the effect that—strike that.

I recall that the question of extraordinary services was discussed. Judge Tolin said something to [22] the effect that the defense of the receiver on the criminal citation issued by the Air Pollution Control District and that Municipal Court action which was brought as a result thereof was in the nature of an extraordinary service.



(Deposition of John Whyte.)

Q. You had explained that to him, had you, that subject matter which resulted in his statement?

A. Yes. In fact, at the time I first learned of the criminal citation on or about February—on or about January 29, I believe that I telephoned Judge Tolin and discussed the matter.

Q. The Smog Control and the Air Pollution matter and the contracts pertaining to it were considered by you during the period about December 23 of 1953—

A. Yes, the day before—

Q. Wait until I finish now, because I want to leave it open; I don't want to pinpoint the date—and the end of December, that last week in December of 1953, that subject matter of the Air Pollution contracts—well, specifically, if you want to look it up, December 28, 1953, page 5, line 24 of your petition.

A. My December 24 time sheet reflects a conference I had with Mr. Hallberg at the Oliver Cromwell the day before Christmas in the afternoon which lasted for about—my trip out and back and conference lasted for two and four-tenths hours.

Q. That is in the afternoon you know?

A. It was after lunch. Yes, I had luncheon at the University Club that day and played dominoes with some of my old friends from O'Melveny & Myers. Mr. Hallberg asked me to examine the files with reference to Mr. Richman's contracts to purchase incinerator equipment for the Canterbury and the Oliver Cromwell. I took the files with me on that day.



(Deposition of John Whyte.)

Q. And you returned them to Mr. Hallberg several days later?

A. I did. I wrote a letter.

Q. That would be about December 29 that you——

A. I wrote a letter dated December 30, 1953, to Mr. Hallberg.

Mr. Enright: December what did he say?

The Witness: December 30, returning the files covering the installation of incinerator equipment at both the Canterbury and the Oliver Cromwell apartment buildings.

Mr. Enright: Q. What did you advise him orally or in writing on that subject matter?

A. I advised Mr. Hallberg orally, I believe, that having examined the files, it was my opinion that those were binding contracts, but that he had no obligation to pay the balance of the purchase price until after the equipment had been installed and approved by the Air Pollution Control District, at which time he became—would become liable for payment of the balance of the [24] purchase price which amounted to 90 per cent of the original price.

Q. Did you inform him in any manner as to the time of performance or as to the subject matter—well, as to time of performance?

A. By “time of performance,” you mean the time when the installation should be made?

Q. Yes.

A. I didn't discuss that question with him.

(Deposition of John Whyte.)

Q. Did you inform him or advise him in any respect concerning the subject matter of this elimination of smog was a subject for criminal prosecution and ordered by the Los Angeles District Pollution Board? A. I did not.

Q. Did you realize that there was such a problem; that is, elimination of smog from these particular apartment houses at that time?

A. I don't recall that I knew anything particular about the smoke condition at the apartments. I knew only that this—these contracts had been signed and that the installation was to be made.

Q. And that the payment under the contract was conditioned upon the Air Pollution Board passing the installation; you saw that in the contract, didn't you? A. I did.

Q. And you knew then, didn't you, that the Air [25] Pollution Board was going to make a check, a test, investigation of the installation, didn't you?

A. I did.

Q. Did you know that it would be a violation if that installation wasn't installed?

A. I suppose I did.

Q. Did you advise Mr. Hallberg?

A. I didn't discuss the question of installation with Mr. Hallberg. I so testified.

Q. That I appreciate, but you haven't so testified until now that you didn't advise Mr. Hallberg concerning the penal aspects of not performing that contract.

A. I did not mention such aspects.

(Deposition of John Whyte.)

Q. No. Now, did you know that during January that the performance of that contract was being held up?

A. I had no knowledge whatever that the performance of that contract was being held up. I——

Q. Mr. Hallberg never asked your advice on that subject matter at all, did he?

A. I have neither no knowledge now, nor have I any reason to believe that it was being held up.

\* \* \* \* \* [26]

Q. Have you your time sheets there, Mr. Whyte?

A. I have.

Q. May I examine them again?

(The documents were handed to Mr. Enright.)

Mr. Enright: Now, it was your practice, wasn't it, Mr. Whyte, to make a notation as to the amount of time expended during a particular day——

The Witness: It was.

Mr. Enright: Q. ——by tenths of an hour?

A. As nearly as I can figure it.

Q. Yes. So if we were to read off the time specifications on each of these time sheets, we would find the amount of time expended on the particular day, is that right? A. That is correct.

Q. Well, then, I would like to read into the record here the time expended on the respective days, and I will ask you to check with me the time so that when I am through we can then have a full record of it. A. Very well.

(Deposition of John Whyte.)

Q. Now, commencing on November 30 there was 2.1 hours.

A. If it will be helpful to you, the green colored slips are my slips, and the yellow colored slips are my partner, Mr. Fitzpatrick's time slips.

Q. Yes. All right, so the first one being a green, there appear the figures 2.1, meaning two and one-tenth——

A. One-tenth. [34]

Q. ——one-tenth hours. December 1st, six hours.

A. Six hours.

Q. December 2nd, 2.3 hours. December——

A. 2.3 hours of my time, and one and a half hours of Mr. Fitzpatrick's time.

Q. That's on December 2nd? A. Right.

Q. December 3rd, six hours of your time. December 4th, seven-tenths of an hour of Mr. Fitzpatrick's time. December 7th, eight-tenths of an hour of your time. December 10, three-tenths of an hour of your time. December 12, three-tenths of an hour. December 16, four-tenths of an hour. December 17, two-tenths of an hour. December 18, 3.9 of an hour? A. Right.

Q. December 21, three-tenths of an hour. December 22, six-tenths of an hour. December 23, one hour. December 24, 2.4 of an hour?

A. Right.

Q. December 28, four-tenths of an hour. December 27, three-tenths of an hour. December 29, one hour.

January 4th, 1.9 hours. January 5th, seven-tenths of an hour. January 8th, nine-tenths of an hour.

(Deposition of John Whyte.)

January 9, four-tenths of an hour. January 11, one-tenth of an hour. January 15, 3.4 hours?

A. Right. [35]

Q. January 19, 1.1 hours. January 25, 5.6 hours. January 26, 1.3 hours. January 26, two-tenths of an hour. January 27, two-tenths of an hour. January 28, 2.2 of an hour. January 29, three hours?

A. That's true.

Q. Those are all correct through January, my reading of the number of hours?

A. So far as I have observed they are.

Q. Yes. Yes. December 1st is 2.6 hours. December 2nd——

A. This is February 1st, Mr. Enright.

Q. Thank you, you are entirely correct. February 2, is 2.7 hours. February 3, is 2.3 hours. February 4th is 1.1 hours. February 5 is five-tenths hours. February 6 is two-tenths hours. February 8 is four-tenths hours. February 9 is 1.2 hours. February 10 is five-tenths hours. February 12 is four-tenths hours. February 13 is three-tenths hours. February 15 is 2.2 hours. February 16 is 1.7 hours. February 17 is 2.4 hours. February 18 is three-tenths hours. February 25, five-tenths hours. February 27, five-tenths hours. February 26, one hour.

Those are correct through February as I read them? A. So far as I can see.

Q. Yes. March 1st, 3.4 hours. March 2, 2.1 hours. March 4, four-tenths hours. March 5, one-tenth hour. [36] March 7, nine-tenths hour. March 8, 1.1 hour. March 9, seven-tenths hour. March 10, 3.1



(Deposition of John Whyte.)

hours. March 11, seven-tenths hour. March 12, four-tenths hour. March 13, one hour. March 15, 2.3 hours. March 17, 2.5 hours. March 18, 1.8 hours. March 24 is 1.3 hours. March 25 is six tenths hour.

April 2, three-tenths hour. April 7, four tenths hour. April 8, two-tenths hour. April 10, nine-tenths hour. April 12, 2.4 hours. April 21, six-tenths hour.

That is the time reflected upon your time sheet?

A. That doesn't include at least one and possibly two time slips since April 21 nor does it include one-tenth hour expended on April 16 and two-tenths hour on April 19. For example, it doesn't include the time spent in deposition here last Thursday, which was April 22, was it?

Q. April 22, and today, April 24. Yes. That's correct. And you are asking to be paid \$3,000 plus extraordinary fees for the smog matter?

A. To the extent that the court determines that I should be paid.

Q. No, but you are asking to be paid \$3,000 plus extraordinary fees, aren't you, Mr. Whyte?

A. Right. That is what my petition asks for, Mr. Enright.

Q. Yes, and that's the amount you are asking for?

A. That is correct. And I expect to ask for additional compensation for the time I have devoted and will devote to this matter since I filed my petition for fees on March 18.

Q. And that would be at a rate exceeding \$30 an hour? [37]

(Deposition of John Whyte.)

A. I think you will find—I will let the figures speak for themselves.

Q. Well, your petition shows 90 plus hours, and you want some \$3,000 ordinary fees for those 90 hours that are shown on your petition?

A. My petition shows 91 hours up to and including, I believe, March 17 or 18.

Q. Now, I note here on December 1st you spent six hours, and among other things you accompanied Mr. Hallberg to Union Bank and Trust Company where “we conferred with Mr. Lipman, execution”——

A. “Executive Vice - president and others re Richman trust.”

Q. Will you read on the rest of it?

A. “We opened a new account in the name of Roy E. Hallberg as receiver of the former Richman trust. Hallberg also signed an authorization to charge checks written by Mrs. Tidwell or Richman dated on or before November 30, 1953, to the new account.”

Q. Go ahead.

A. “We then visited the La Loma apartments where we spoke to Miss Schumacher, the manager, exhibited to her order appointing Hallberg as receiver and collected certain rents totaling \$787.50. Also visited Fountain Manor apartment hotel, spoke to Mrs. Lipphardt, exhibited order appointing receiver, and generally explained situation. [38] She said she would turn over rents after order served on Richman and he had authorized her to

(Deposition of John Whyte.)

release funds to Hallberg. Same at Canterbury apartment hotel. Spoke to Mrs. Polly Gregg there. Western Arms apartment hotel, spoke to Mrs. Maude Kennedy. Drove 22 miles in my car seeing said apartment managers."

Q. You were rendering legal services, were you, when you were going with the receiver to instruct the managers to turn money over to him?

Mr. Whyte: I will object to the question as argumentative, calling for the conclusion of the witness, and let the facts speak for themselves. Refuse to answer it on those grounds.

Mr. Enright: Q. Did you do anything other than is noted here in these notations you have just read on December 1st, 1953?

A. I believe I have already stated that as to all of my time slips they reflect with substantial accuracy most, if not all, of the things which I did on each particular day. In some instances there may have been minor omissions that I failed to put down on my time slips.

Q. Do you recollect any minor omissions or things that you failed to put down on that December 1st time slip?

A. No, I don't recall anything else. Incidentally——

Q. You knew, of course, on that day the receiver [39] hadn't qualified, wasn't duly appointed receiver, didn't you, at the very time you picked—instructed or participated in the taking of the \$787?

(Deposition of John Whyte.)

A. I think I knew that his bond had not been filed with the court.

Q. Very well.

A. And if I may explain my answer further, please.

Q. Go ahead.

A. These time slips are virtually in every instance, made out at the close of the day upon which the services are rendered. In many instances—in fact, in most instances—I keep a running record during the course of the day as I perform the particular service; I note it on the slip. Then I review all of the matters that evening and make certain that my slip correctly reflects what I have done during the course of the day.

Q. But you did do these acts on December 1st that you have noted on your time slip?

A. I did.

Q. Yes, sir. Now, on December 2nd you expended 2.3 hours. Will you read your notation therefor so that it will be accurate from the reading of your own handwriting?

A. "Obtained form of petition for appointment of this firm as attorneys for receiver and form of order thereon. Dictating draft of petition and order and revising same. Conference with Hallberg re his bond. Telephone [40] call to Camusi for information re latest developments. Appearance in Judge Tolin's chambers and presentation of receiver's petition for authority to employ counsel and order employing same. Order signed and filed.

(Deposition of John Whyte.)

Q. And that reflects the things you did on December 2nd as best you can now recollect them, is that right? A. It does.

Q. Now, on December 2nd Mr. Fitzpatrick, your partner—am I correct so far? A. Yes.

Q. That he is your partner? He expended an hour and a half in rendering the following service, is that correct— A. Yes.

Q. —as noted on this note, this being typewritten. Shall we read it, or give it to the reporter to have her copy it? A. Be glad to read it.

Q. All right, you read it then.

A. "Hallberg came in at 9:00 a.m. re his bond as receiver. I telephoned Hecht at Fidelity and Deposit. He said that he had been asked last night by Richman to put up a supersedeas bond on appeal, that if a writ of supersedeas were issued, we might not be able to collect the premium of our bond out of the assets of the receivership. He therefore wanted to wait on the issuance [41] of the bond to see if a supersedeas were issued. I reported this to Hallberg. We agreed to wait one hour.

"After a while, Hallberg suggested that he talk to Judge Tolin's secretary. He called her, but got Judge Tolin, who said to get the bond in right away and that he would see that the premium was paid out of the receivership assets. I phoned Hecht and told him that if he weren't able to issue the bond, we would get it elsewhere. He then asked if it was O.K. for him to telephone Judge Tolin. I said yes.



(Deposition of John Whyte.)

He called back in a few minutes and said he would issue the bond. I gave him the title of the court and cause and Hallberg went over to his office to get the bond. Whyte came in and I reported to him what had happened."

Q. Now, on December 18, you expended 3.9 hours. Would you read your notes as to what your service consisted of on that day?

A. "Telephone calls to and from Mr. Harrison to obtain facts necessary to preparation of petition for authority to pay Christmas bonuses. Preparation and verification of said petition. Telephone call from Camusi asking for information re progress of receivership. Telephone call from Hallberg re petition. Clearing with Judge Tolin's secretary re when Judge can sign order. Presentation of petition and order to Judge Tolin ex parte in his courtroom. The Judge signed order. Left word for [42] Harrison to issue checks in payment of bonuses. Conference with Mrs. Hallberg re factual data needed for petition to renovate the individual apartments as they become vacant. Telephone call from Harrison re manner of paying Christmas bonuses."

Q. That reflects the services you rendered on that day, December 18, does it not?

A. To the best of my knowledge, it does.

Q. This is the only written record you have of the services rendered that day, isn't it?

A. It is the only written record I have. It is the original written record from which the petition was prepared.

(Deposition of John Whyte.)

Q. Now, on December 24 you expended 2.4 hours. Would you read your notes as to services that were rendered on that day?

A. "Conference with Hallberg at Oliver Cromwell re proposed petition for authority to renovate apartments, transfer of fire insurance policies to a mutual company, report to be filed by receiver, does receiver have to carry out Richman's contract to purchase incinerator equipment, bookkeeping problems, and other matters."

Q. What were the "other matters" that you can recollect at this time that were considered by you as attorney for the receiver?

A. I don't recall. [43]

Q. Have you any memoranda or record anyplace that will indicate what they were?

A. I do not.

Q. Now, the incinerator equipment referred to there is the equipment involved in the Smog Control order or citation, criminal citation, isn't it?

A. It's the equipment specified in the contracts which Mr. Richman made with Air Pollution Control, Inc., covering installation of certain smog control equipment in the incinerators at the Oliver Cromwell and the Canterbury.

Q. On December 24, is it your recollection that the file was then given to you by Mr. Hallberg pertaining to that subject matter of the incinerators and the smog control, or the smog control contract?

A. Yes.

Q. Yes.

(Deposition of John Whyte.)

A. I took the files with me in my brief case when I left Mr. Hallberg's office at the Oliver Cromwell.

Q. Thereafter you read the file, did you——

A. I——

Q. ——and you noted the time you expended in that connection on your time sheets? I refer you specifically to December 28, being your next time sheet, reading as follows: "Telephone calls from and to Harrison re construction of incinerator equipment for Canterbury and [44] Oliver Cromwell. Also re handling of petition for authority to renovate apartments." Is that correct, you did——

A. On December the 27th, the preceding day——

Q. Well now, that is December 28th that I just read to you.

A. That is right.

Q. Now, on December 27, the next notation here, which seems to be out of order, but inadvertently, I am sure, did you have something to do with that subject matter of the contracts?

A. Yes. My time slip shows examination of files with reference to installation of incinerator equipment for Canterbury and Oliver Cromwell and liability of receiver to carry out contracts for such installation.

Q. And you expended three-tenths of an hour——

A. I did.

Q. ——on that subject matter at that time, is that right?

A. That is right.

Q. Then your next time sheet, we having read

(Deposition of John Whyte.)

already the December 28th time sheet, is December 29. Would you read that time sheet?

A. Surely. "Taking petition for authority to renovate apartments to Judge Tolin's chambers. Telephone call to Harrison re court order requiring receiver to [45] permit plaintiff's appraisers to visit apartment houses and plaintiff's accountants to inspect 1953 books."

Q. Now, did you have a conference with Judge Tolin in chambers on December 29 concerning the subject matter of that petition?

A. I may have. I don't recall.

Q. You returned the Smog Control contracts to Mr. Hallberg or Mrs. Hallberg or Mr. Harrison on the date shown in your transmittal letter which is, I believe, already referred to in the deposition?

A. Yes.

Q. Would you read your notes as to the services rendered on January 4th resulting in 1.9 hours being expended?

A. "Conference with Judge Tolin in chambers re contents of first report to be submitted by receiver, petition for authority to renovate, proposed petition for authority to inventory assets and other matters. Telephone calls from Mrs. Hallberg and discussion of above items. Telephone call to Harrison re objections, if any, to inventory hereinafter mentioned. Telephone calls to Camusi and to Enright asking if they would agree not to require a detailed inventory of every item of furniture and fixtures in the five apartment houses for purposes



(Deposition of John Whyte.)

of report of receiver. They both agreed it was unnecessary." [46]

Q. Now, on January 15 you expended 3.4 hours. Will you read what services you rendered on that day?

A. "Telephone call from Lawrence Martin and also from Camusi re matters to be considered at hearing this afternoon on receiver's petition for authority to renovate apartments. Court appearance re hearing on said petition. Petition was granted. Conference with Hallberg in preparation for hearing on said petition."

Q. On January 19, 1953, you expended 1.1 hours in rendering the following services: "Preparing first report of receiver and petition for instructions. Telephone call to Harrison re data to be included in said report." Is that correct?

A. That's right.

Q. On January 25——

A. In fact, if I may state for the record, Mr. Enright, I think the allegations of the petition which I have filed as to the nature of the services performed on the various days are substantially in conformity with the notations on the time slips, so that——

Q. That I am aware of.

A. ——I think this is unnecessary, but if you wish to build up a long record here, I suppose that's your privilege.

Q. What you failed to do, Mr. Whyte, is to specify the hours on the respective matters. [47]



(Deposition of John Whyte.)

A. You already have noted in the deposition the number of hours spent on each day.

Q. Will you answer this question: On January 25, 1953, you expended 5.6 hours in rendering the following services:—

A. Shall I read them?

Q. Yes, if you will.

A. "Instructing and working with Harrison, Hallberg's bookkeeper, re preparation of schedules to be attached to receiver's first report. Dictating draft of receiver's first report and petition for instructions. Preparing notice of hearing on first report of receiver and petition for instructions."

Q. Now, what instructions did you give to Harrison on January 25 concerning Hallberg's bookkeeping or the books?

A. I instructed him with reference to the preparation of the schedules to be attached to the receiver's report.

Q. Do you recollect what you told him during that period of time?

A. If I may see a copy of your local District Court rules, I think perhaps it would refresh my recollection.

Q. Surely.

(The document was handed to the witness.)

Mr. Enright: Q. You might just tell us what section you instructed him concerning. [48]

A. I talked to him with reference to the requirements of Rule 18, Subdivision (b) of the local rules for the Southern District of California. I explained

(Deposition of John Whyte.)

to him that Mr. Hallberg's report should contain a brief summary of the operations of the receiver, an inventory of the assets, a schedule of all receipts and disbursements, and a list of all known creditors with names, addresses and amounts of claims, including taxes of all kinds, conditional sales contracts, and contingent claims known or which it is believed possibly exist.

Mr. Harrison asked me a great many questions about the preparation of schedules which would accurately reflect an inventory of the assets, a schedule of all receipts and disbursements, and a list of all known creditors with names, addresses and amounts of claims, et cetera.

Q. You gave him a copy of the rule, didn't you?

A. No, I didn't give him a copy of the rules.

Q. He took it down in shorthand when you read it to him, is that right, or do you know?

A. I don't know whether he took it down in shorthand or not. I know I explained the requirements of the rules to him, and he had a number of questions as to the mechanics of setting up the schedules, what should be shown thereon.

Q. Now, directing your attention to January 27, will you read your notations on that day? [49]

A. "Telephone call from Harrison re problems involved in preparing receiver's first report. Also criminal citation for alleged violation of smog regulations."

Q. After returning the contract pertaining to the incinerators or smog contract, this is the first

(Deposition of John Whyte.)

knowledge or notice you had of a criminal citation on that subject matter, is that right?

A. It is.

Q. That's your time slip for January 27, 1953, isn't it? A. That is correct.

Q. But it says '53. It means January 27, 1954?

A. It should be '54.

Q. Yes. You may change it now, if you wish; whatever you desire.

A. (Marking on document.)

Q. Then two days later, on January 29, you phoned Mr. Richman, didn't you, in accordance with—or read the January 29 notation of your services, will you, reflecting three hours expended?

A. "Telephone call from Harrison re criminal citation for violation of smog regulations. Dictating ex parte order and affidavit extending time to file receiver's first report and petition for instructions. Telephone call from Mrs. Hallberg re efforts being made [50] to dismiss criminal citation for violation of Smog Control Ordinances. Procuring Judge Tolin's signature on abovementioned order. Telephone call to Mr. Tow in office of Air Pollution Control District re citation for violation of Smog Ordinances. Telephone conversation with Judge Tolin re receiver's first report. Judge decided to modify Rule 18 (b) and postpone filing report until March 20, 1954, so that it might cover a full three months period. Telephone call to Harrison re delay in filing report—also problem of tenant who hadn't paid his bill but had left some of his clothes in the

(Deposition of John Whyte.)

apartment. Conference with Hallberg re his first report and other matters incident to receivership. Telephone call to Camusi re delay in filing report.

Q. May I see it?

A. Surely. I also recollect, although no mention of it is made on the time slip, that I telephoned——

Q. Mr. Richman?

A. ——you or Mr. Richman or both of you.

Q. At about 4:15 in the afternoon, Friday, January 29, and left the message with Mr. Richman's secretary, isn't that right?

A. I think that's right. I couldn't find Mr. Richman in his office, and I didn't find you in your office.

Q. Now, Mrs. Hallberg—— [51]

A. Incidentally, my telephone calls to you and Mr. Richman were with regard to this criminal citation, because Mr. Richman was named as a defendant in the citation.

Q. Yes, charged with a misdemeanor, isn't that right?

A. Yes, it was a misdemeanor.

Q. Yes. Now you have the notation here: "Telephone call from Mrs. Hallberg re efforts being made to dismiss criminal citation for violation of smog control order."

A. "Ordinances."

Q. "Ordinances." Thank you. And then immediately following that, will you read the next phrase here. I am having a little trouble with the first word.

A. "Procuring Judge Tolin's signature on above-mentioned order." That refers to an ex parte order



(Deposition of John Whyte.)

and affidavit extending time to file the receiver's report and petition for instructions.

Q. Now, going back to this portion of it pertaining to Mrs. Hallberg's efforts, did you have a conversation with her concerning her efforts to dispose of the criminal citation for violation of the smog——

A. Apparently did from my notes.

Q. What was the conversation?

A. I don't recall.

Q. On February 1st you appeared in Department 30A of our Los Angeles Municipal Court?

A. "Re arraignment in City of Los Angeles versus Richman and McConnell."

Q. At that time I told you that I would appear in behalf of Mr. Richman and also offered to appear for Mrs. McConnell, didn't I?

A. I don't recall that you offered to appear for Mrs. McConnell. I know I was appearing on her behalf at Mr. Hallberg's request since she was his agent at the time.

Q. After I had made a statement to the court, then you requested likewise that the matter be continued until February 23, is that right?

A. As I recall, we both requested that the matter be set over until February 23 at 9:30 a.m.

Q. Your request came after my request, though, didn't it?

A. I believe I extended you the courtesy of allowing you to address the court first.



(Deposition of John Whyte.)

Q. Yes. You expended 2.6 hours on that matter, didn't you, on that day?

A. On that matter alone, of course not.

Q. All right.

A. There are a number of other notations shown on the slip which I would like to read, if I may.

Q. You have once read them into the record, I think.

A. I have not read them into the record.

Q. Well, pardon me, you have not, so read the whole [53] of it then so we can——

A. "Conference with Mr. Tow of Air Pollution."

Q. No, read the whole of it, "February 1st." If you are going to read a portion of it, please read the whole.

A. Well, I have already read the first part. If you'd like me to read it again, I will.

Q. Yes, thank you.

A. "Appearance in Department 30A, Los Angeles Municipal Court re arraignment in City of Los Angeles versus Richman and McConnell. Set over until February 23 at 9:30 a.m. Conference with Mr. Tow of Air Pollution Control re case. Telephone call to Harrison urging him to see that Oxy Aire gets to work immediately on installation of smog control equipment. Telephone call from Mrs. Hallberg re result of court hearing. Dictating draft of first report of receiver and petition for instructions and revising the same."

(Deposition of John Whyte.)

Q. Will you read your memorandum of the services rendered on February 2 resulting in 2.7 hours being expended?

A. "Telephone conversation with Harrison re tax returns to be filed by receiver. Examination of defendants moving papers re new trial. Telephone call to and call from Camusi re tax problems and necessity, if any, for moving for the appointment of a permanent receiver. [54] Telephone call to Harrison requesting names of known creditors and telephone conversation with Mrs. Hallberg re problems discussed with Camusi. Telephone call from Mr. Hallberg re tax problems. Conference with Judge Tolin re appointment of Hallberg as permanent receiver and re associating tax counsel for tax problems."

Q. Now on February 3rd you next rendered services on the Smog Control matter which resulted in the following memorandum being made, and I quote it: "Telephone call from Mrs. Hallberg re tax problems, removal of—— A. Part.

Q. ——part of parapet from Canterbury and Smog Control problems. Conference with Mrs. Hallberg re such problems——

A. ——as Smog Control, advisability of selling Western Arms and Fountain Manor, tax returns, et cetera."

Q. All right.

A. Those are two of a number of items which appear on the time slip for that day.

(Deposition of John Whyte.)

Q. Well, I am only inquiring about the Smog Control matter.

There is another notation here "Telephone conversation with Tow of Air Pollution Control re conference with City Attorney and inability of Oxy Aire to perform their contract at Canterbury. Telephone call to Oxy Aire re their ability to install equipment promptly—— [55]

A. Promptly.

Q. ——at Oliver Cromwell and Canterbury."

These are the only notations pertaining to the Smog Control matters as of that day, February 3rd?

A. I believe that is correct.

Q. There was a total of 2.3 hours rendered, services or time expended that day?

A. On those and other matters.

Q. On those and other matters. On February 4th you had a telephone conversation with myself, Mr. Enright, concerning the Smog Control problem?

A. I did.

Q. And on various other matters?

A. That's true.

Q. And the total for your time of February 4th was 1.1 hour?

A. That is true. That matter that you mentioned and other matters were performed on that day as shown on the time slip.

Q. You also dictated a letter, did you, to the Air Pollution Control District re progress being made towards installation of incinerator equipment?

A. I did.

(Deposition of John Whyte.)

Q. Have you got that letter? I haven't seen that yet, Mr. Whyte?

A. I showed it to you on two occasions. It is in [56] my files and you may see it again if you'd like.

(The document was handed to Mr. Enright.)

Mr. Enright: Q. Thank you.

For the record, I will read the letter into it. It's addressed to Air Pollution Control District, 5201 South Santa Fe, Vernon, California. February 4th, 1954, attention Mr. Tow.

"Gentlemen:

"Following my telephone conversation with your Mr. Tow yesterday afternoon regarding the installation of Oxy Aire——

Mr. Whyte: "By Oxy Aire."

Mr. Enright: ——by Oxy Aire of Smog Control equipment in incinerators located at the Oliver Cromwell apartment hotel, 418 South Normandie, Los Angeles, and the Canterbury apartment hotel, 1746 North Cherokee, Hollywood, I discussed the matter over the telephone with Mr. Manalis, one of the officers of Oxy Aire. Mr. Manalis informed me that his company had on hand sufficient material to install such incinerator equipment, including enough metal of a particular heat resistant type which is in a somewhat short supply throughout the country. Mr. Manalis further stated that his company would commence the work of installation at the Oliver Cromwell on Monday morning, February 8, and at the Canterbury a few days later.

He estimated that it would take from two to three weeks to complete the installation. [57] I trust that this information will be helpful to you.

Yours very truly,

John Whyte."

Mr. Whyte: "Attorney for Roy E. Hallberg, receiver of the assets of the former Richman trust."

Mr. Enright: Q. Now, to summarize your services after February 4th, 1954, the services consisted solely of appearing up at the City Attorney's office, did it not, at a conference had between one of the City Prosecutors, yourself, Mr. Hallberg, and myself?

A. You are speaking now of my services only with reference to the Smog Control problem?

Q. Oh, yes, just the Smog Control problem.

A. And after which date did you mention?

Q. After February 4th. That's the date of the letter there which we just read into the record.

A. No, they did not.

Q. What else did you do?

A. On February 5th, I received a telephone call from Mr. Camusi advising me that Mr. Richman had been picked up on a bench warrant. I remember I questioned that. I told Mr. Camusi that he must be in error, that the criminal matter had been continued for several weeks, but Camusi insisted that that information had been given to him by yourself, either to him or to Lawrence Martin.

I told him I thought there must be a mistake, [58] but since I was concerned about it, I tele-



(Deposition of John Whyte.)

phoned to Mr. Tow of Air Pollution Control District regarding that matter.

Q. Regarding what matter, the picking up of Mr. Richman, or what?

A. Yes, regarding whether or not the case had—something had happened to the lawsuit that it had been reactivated without my knowledge.

Q. I see. Did you call him from Mr. Richman being picked up, or you were representing the receiver then? Your problem was Mr. Richman being picked up, wasn't it, not——

A. No. I was concerned——

Q. I see.

A. ——for fear the action taken against Mr. Richman would lead to action being taken against Mr. Hallberg or his agents; that they might be picked up on a bench warrant.

Q. Well, will you proceed to explain what other services you rendered concerning the Smog matter, other than this telephone call from Mr. Camusi?

A. If you will allow me to look at my sheets, I will tell you.

Q. Proceed, sir.

A. On February the 9th I attended a conference among Messrs. Tow, Enright, Hallberg, and myself in the office of Deputy City Attorney Davis re criminal complaint charging violation of Health and Safety Code on account of [59] smoke from incinerator at Oliver Cromwell. Complaint was dismissed.

Q. Then there was 1.2 hours expended that day?

(Deposition of John Whyte.)

A. That's right.

Q. Any other services on the Smog matter other than the telephone call from Camusi?

A. Any services subsequent now to February 9, is that your question?

Q. Yes, February 4th—I won't argue the point with you. The record will speak for itself.

A. Well, without having to go through each and all of the rest of my time slips from February 9 on, let me say that I don't recall of any further work in connection with the Smog Control problem, subject to being corrected by the allegations of my petition.

Q. Well, the fact is that on that day when we were in the City Prosecutor's office, Mr. Davis, the City Prosecutor, told you after you had signed a stipulation in his office that the complaint, criminal complaint, would be dismissed, isn't that right?

A. He did.

Q. So that was the end of the matter, wasn't it?

A. I think it was, as I say. I may have advised Mr. Hallberg later with reference to performance of these contracts which Mr. Richman had entered into with Air Pollution Control District. I am not certain of it. [60] \* \* \* \* \*

Q. You commenced private practice, or practice with Mr. Fitzpatrick about January 1st, 1953?

A. I went into partnership with Mr. Fitzpatrick on January 1, 1953.

Q. Before that time you were associated with the law firm O'Melveny & Myers?

(Deposition of John Whyte.)

A. I was, for a period of almost exactly 10 years.

Q. And before becoming associated with that firm, what?

A. I was associated with the firm of Schultheis & Laybourne from approximately March, 1940 until June or July of 1941.

Q. Have you now recited all of your associations since you commenced practicing law in California?     A. I have. [62]

\* \* \* \* \*

[Endorsed]: May 7, 1954.

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[Endorsed]: No. 14702. United States Court of Appeals for the Ninth Circuit. Frederick I. Richman, Appellant, vs. Lyda Tidwell, Roy E. Hallberg, as Receiver of all the real and personal property constituting the former Richman Trust, and John Whyte, attorney for Receiver, Appellees. Lyda Tidwell, Appellant, vs. Frederick I. Richman, Roy E. Hallberg, as Receiver of all the real and personal property constituting the former Richman Trust and John Whyte, attorney for Receiver, Appellees. Transcript of Record. Appeals from the United States District Court for the Southern District of California, Central Division.

Filed: March 26, 1955.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals  
for the Ninth Circuit

No. 14702

LYDA TIDWELL, Etc.,  
Plaintiff and Appellant,  
vs.

FREDERICK I. RICHMAN, Etc., et al.,  
Defendants and Appellants.  
ROY E. HALLBERG, Receiver.

### STATEMENT OF POINTS

1. The Trial Court erred in assuming it had power or jurisdiction to adjudicate the plaintiff's and defendant's pro-rata rights to the balance of the funds in the possession of the receiver upon settling the receiver's accounting.

2. If the Trial Court did have power or jurisdiction to determine the plaintiff's and defendant's pro-rata rights to the balance of the funds in the possession of the receiver upon settling his accounting, it committed error in the following particulars:

(A) By failing to charge the plaintiff's interest in the balance of the funds in the amount of \$785.00 being funds under the control of the receiver, which the plaintiff's agents took possession of and retained:

(B) By failing to charge the plaintiff's interest in the balance of the funds in the amount of \$1290.59, being rents collected by the plaintiff's

agents which were required by the order of the Court to be collected by the receiver;

(C) By failing to charge the plaintiff's interest in the balance of the funds in the amount of \$2027.27, being a sum of money paid by the receiver on account of an obligation assumed and required to be paid by the plaintiff in accordance with the settlement agreement made by plaintiff and defendant terminating the receivership and settling their dispute;

(D) By granting the plaintiff a credit in the amount of \$2476.38, being one-half the real property taxes which were paid by the plaintiff, when pro-rating the balance of the funds remaining in the possession of the receiver between the plaintiff and defendant;

(E) By granting the plaintiff a credit in the amount of \$1300.00, being one-half the cost of catalytic units paid for by plaintiff, when pro-rating the balance of the funds remaining in the possession of the receiver between the plaintiff and the defendant.

3. The Court erred in awarding the receiver, Roy E. Hallberg, a fee for his services as receiver in the amount of \$6,000.00 for the following reasons:

(A) The receiver misrepresented his qualifications and experience to the Court and thereby obtained his appointment;

(B) The receiver represented that he was semi-retired and had ample time to render the services



required by the receiver in this case, and concealed that he had accepted full-time employment from an agency of the County of Orange, State of California, at a monthly salary of \$350.00;

(C) The receiver concealed that he would and did delegate his executive duties to others; and,

(D) The receiver failed and neglected to perform the duties of a receiver and performed duties in a negligent and careless manner;

4. The Trial Judge abused his discretion by refusing, upon petition, to disqualify himself to hear the accounting of the receiver and his petition for fees.

5. The Court erred in awarding the attorney for the receiver fees in the amount of \$1800.00, in that said fees are excessive and unreasonable.

Dated this 29th day of March, 1955.

BRADY, NOSSAMAN & PAULSTON  
and

JOSEPH T. ENRIGHT,

/s/ By JOSEPH T. ENRIGHT,

Attorneys for Defendants and  
Appellants

Affidavit of Service by Mail attached.

[Endorsed]: Filed March 30, 1955. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

## STATEMENT OF POINTS

1. The trial court correctly assumed jurisdiction to adjudicate plaintiffs' and defendant, Frederick I. Richman's rights, respectively, to the balance of funds remaining in the hands of the receiver after the payment of all bills and costs of the receivership, including the receiver's fee and the fee of his attorney.

2. As to the Points raised on appeal by defendant Richman with respect to the division between plaintiff and defendant Richman of said balance remaining in the hands of the receiver, the trial court did not commit error:

(A) In failing to charge plaintiff's interest in the balance of the funds in the amount of \$785.00, which \$785.00 consisted of a petty cash fund which was part of the assets purchased by plaintiff from defendant Richman.

(B) In failing to charge plaintiff's interest in the balance of the funds in the amount of \$1,290.59, or for any other amounts, as rents collected by plaintiff's agents.

C. In failing to charge plaintiff's interest in the balance of the funds in the amount of \$2,027.27, being a mortgage payment made by the receiver on or about February 28, 1954. (As a matter of fact, plaintiff's interest was charged with one-half of this amount as is revealed by the order of court docketed and entered November 19, 1954.

D. In granting plaintiff a credit for one-half of the real property taxes which were paid by plaintiff out of her own separate funds, which taxes covered the last two month period during which plaintiff and defendant were joint owners of the property.

E. In granting plaintiff credit in the amount of \$1,300.00, being one-half the cost of catalytic units which plaintiff paid out of her own separate funds.

3. That if any mistakes were made in computations, defendant Richman waived the same by failure to object in the trial court.

4. As to the points raised on appeal by plaintiff Lyda Tidwell with respect to the division between plaintiff and defendant of said balance remaining in the hands of the receiver, the trial court committed error

(a) In granting defendant Richman a credit of one-half the agent's fee for the month of November, 1953, the last month in which he acted as agent of the Richman Trust, prior to the court terminating the same and appointing the receiver to operate said properties pending a final determination of the action;

(b) In failing to credit plaintiff's interest in the sum of \$906.50, consisting of seller's escrow fees in the amount of \$329.00 and revenue stamps in the amount of \$577.50, which were defendant's rightful expenses as seller in connection with the sale of all his right, title and interest in and to the assets of the Richman Trust to plaintiff.

5. Plaintiff did not appeal from that portion of

the order finding the receiver's account to be true and correct, and fixing the fees of the receiver and his attorney, but plaintiff does appeal from the order insofar as it charges plaintiff one-half the sum of \$89.20 paid by the receiver for copies of depositions, since said depositions were taken in connection with defendant's objections to the account of the receiver. (Plaintiff did not object to the fixing of reasonable fees for the receiver and his attorney, nor has plaintiff appealed from that portion of the order.

6. The trial court did not abuse its discretion in refusing to disqualify itself in hearing the accounting of the receiver and petition for fees.

Dated this 12th day of April, 1955.

MARTIN, HAHN & CAMUSI,  
/s/ By LAURENCE B. MARTIN,  
Attorneys for Plaintiff and  
Appellant

Affidavit of Service by Mail attached.

[Endorsed]: Filed April 13, 1955. Paul P. O'Brien, Clerk.